Central Law Journal.

ST. LOUIS, MO., JULY 1, 1904.

VALIDITY OF ACTS PROHIBITING THE "DOCKING" OF HORSES' TAILS.

The humane societies of the various states are meeting with successful recognition not only from the different legislatures in support of the various laws proposed by them, but also from the courts in upholding the laws so enacted. The continual triumph of the humane societies in the enactment and enforcement of laws for the prevention of cruelty to animals is a triumph also of our higher civilization. While our laws in this direction have not approximated the idolatry of the ancient Egyptians toward their sacred animals, we have gone far toward a sensible realization that the domestic animals which serve us so faithfully are entitled to immunity from cruel and useless suffering. That this is the principal ground of upholding legislation for the prevention of cruelty to animals, is clearly shown by Mr. Tiedeman in his treatise on State and Federal Control of Persons and Property. "It is the torture to the animal," says Mr. Tiedeman, "that is prohibited, wherever it is done. If the law was considered and justified merely as the prohibition of an offense against the public sense of mercy, and involved no recognition of rights in the dumb animals, the operation of the law would have to be confined to public acts of cruelty, such as unmerciful beating on the streets and other thoroughfares. But it is plain that the ordinary law the prevention of cruelty to animals is broken just as much by cruel treatment in the stable as in the public highway; whether done in the presence of a large assembly, as in a cockpit; or with no other present than the person whose anger or pure maliciousness induces the act of cruelty. The animals so protected must be recognized as subjects of legal rights."

The power of the legislature to enact such legislation being vindicated, the question arises how far can they go in providing a punishment for the offense. This question is very learnedly discussed in the recent case of Bland v. People, 76 Pac. Rep. 359, where the Supreme Court of Colorado, in upholding a law prohibiting the docking of horse's tails, declared that not only might the legislature punish the person who docks a horses' tail or the person who procures the same to be docked, but may also prohibit the use or trading of *unregistered* docked horses. It appears that the legislature feared that it would be as difficult to prove who docked a horse's tail as it would be to determine who killed certain wild game in the prohibited season, and so as in the latter any person having *in his possession* game animals is guilty of a violation of the law, so also in the former case the legislature of Colorado has made it a violation of the law to in any way use or trade in unregistered docked horses. The registration feature is added to protect those having horses with "docked" tails at the time of the passing of the act. Such persons were given a reasonable time within which to register a full description of their horses, after which time all unregistered horses would be pratically confiscated. In this particular case the facts justify the legislature's peculiar wisdom in this regard as the defendant, in whose use and possession a docked horse was found, had deliberately sold the horse to another person for the purpose of having him docked and then buying him back again. The court in its judgment prohibited the defendant from in any way using or trading the horse. In justifying the act of the legislature imposing such an apparently severe punishment, the court said:

"The law operates upon that class of persons who use unregistered docked horses, but the classification is reasonable and not arbitrary, and is not objectionable as class legislation, and does not violate that provision of the constitution which provides that no state shall deny to any person within its jurisdiction the equal protection of the laws. The character of the offense prohibited by the statute is such that something more than the mere prohibition of the docking was necessary to accomplish the purposes of the act, and the means employed by the legislature are probably the most efficient that could be devised to prevent the docking. The whole scheme and purpose of the act would probably fail if the use of the docked animals were not prohibited, and as the act is clarly intended to conserve the public morals and to protect the horses, and as

the means employed by the legislature to effectively prevent the cruelty prohibited by the statute are reasonable and consistent with the policy of the state as declared by the act, and are measures necessary for the protection of the intersts of the public, it becomes our duty to uphold the statute. But for another reason the law can and should be sustained. It is competent for the legislature to provide such punishment as, in its judgment, the offense warrants; and, unless the punishment inflicted can be regarded as cruel or unusual, the courts cannot interfere. Although the statute expressly fixes the penalty for its violation as fine and imprisonment, or both, we know of no good reason why the provisions forbidding the use of unregistered docked horses may not be regarded as an additional punishment imposed upon those who violate the law. Counsel say the deprivation of the use of the unregistered docked horse was not imposed as an additional punishment upon the person who docked the horse, because the horse may have been docked in a state where the docking of horses' tails is not a crime, and brought here, and because, if a burglar should break into a stable and steal a horse, and then dock his tail, the owner, if he subsequently recovered his property, could not use his horse. The statute forbids the importation of docked horses. Whether that provision interferes with the right of congress to regulate commerce between the states is not involved in this case, for the reason that the horse in question was docked in Colorado. What our ruling would be in a case where a thief had docked a stolen horse, and the rightful owner had undertaken to use him after he was docked, we are not prepared to say; but the horse in question was not a stolen horse, nor was he docked by a thief. With full knowledge of the law the owner of the horse docked him and sold him to Bland, and Bland, with full knowledge of the law, bought a docked horse. Their property has not been taken without due process of law. The law has not destroyed their property. They have destroyed their own property. Bland sold the horse, and within two weeks bought him back. In the interim the horse's tail was docked. There was no necessity for docking the horse's tail, and the parties concluded to defy the law, and they must take the consequences. We regard the law as just, wise and humane, and withal a lawful exercise of the power confided to the legislature, because it conserves the public morals, and because it puninshes the cruel and senseless treatment by man of his best and most constant friend."

NOTES OF IMPORTANT DECISIONS.

THE COMPETENCY OF EVIDENCE OBTAINED BY DECOY SOLICITATION.—The decision of the court of appeals in People v. Mills, April, 1904, affords an interesting illustration of the legitimate use of traps and decoys for the pupose of obtaining criminal evidence. The opinion of the court, by Judge Vann, should be read in connection with the opinion of Justice Hatch below, 91 App. Div. 331, which, in effect, is adopted, in order that a complete understanding of the position taken may be had. Apropos of this Mills case, it may serve the profession to collect, in convenient compass, a number of scattered decisions which show how steadfastly the New York courts have disregarded sentimental considerations in passing upon the competency and weight of evidence. If evidence is competent, the tendency of the decisions, particularly in recent years, has been to ignore the method by which it was obtained, whether that method involved force or fraud.

In the matter of confessions, for example, the English rule regulating their admission was so strict that Baron Parke, in Reg. v. Baldy (2 Den. C. C., 430. 455), declared that in its application justice and common sense had been too frequently sacrificed at the shrine of mercy, and this remark was repeated by Harlan, J., in Hopt v. Utah, 110 U. S. 574. A recent New York case sustained the admission of a confession, though it was secured by gross deception, an officer of the law having ingratiated himself into the confidence of the prisoner as a supposed friend. People v. White, 176 N. Y. 331. The opinion of the court of appeals cites a number of like decisions, and declares that the doctrine has met with the sanction of the courts of high authority. As for detective evidence generally, the New York courts have declared that it is necessary to resort to this mode of ascertaining whether criminal acts have been committed, and that without its use the authorities would be helpless. Poople v. Noelke, 29 Hun, 461, 466, affirmed 94 N. Y. 137. The court of appeals has recently said that the rule that the evidence of detectives and prostitutes should receive some corroboration is, after all, only a rule for the guidance of judicial conscience (Winston v. Winston, 165 N. Y. 553); and in this respect it corrected a misapprehension of two of its previous opinions (Moeller v. Moeller, 115 N. Y. 426; McCarthy v. McCarthy, 143 N. Y. 235), which had been construed as absolutely requiring corroboration of such evidence. The

courts have systematically refused to consider private detectives to be accomplices. People v. Noelke, 94 N. Y. 137. If detectives occupy an official or semi-official position, such as agent of an incorporated society or an agent of the excise department, the courts have held that they are not to be ranged in the same category as persons hired to procure evidence, nor as ordinary detectives. People v. Roosevelt, 2 App. Div. 498; Cullinan v. Trolley Club, 65 App. Div. 202; Cullinan v. Rorphuro, 87 N. Y. Supp. 570.

The use of decoy letter evidence has been declared to be both proper and necessary. Grimm v. United States, 156 U. S. 604; Goode v. United States, 159 U. S. 663; Rosen v. United States, 161 U. S. 29; Andrews v. United States, 162 U. S. 420. Our court of appeals followed and cited the Grimm case in a recent case where testimony had been procured by a decoy. People v. Krivitzky, 168 N. Y. 182.

Passing from evidence obtained by deception and fraud to evidence obtained by force, we find similar rulings. The earlier authorities indicate a tendency to exclude such evidence upon the ground that it compelled the person against whom it was offered to be a witness against himself, in violation of his constitutional right. Thus, in 1873, a woman was tried for murdering a bastard child. While she was in jail she submitted to an examination by two physicians to ascertain whether she had been recently delivered of a child, having been told that if she did not permit the examination force would be used to compel her to allow it. Upon the trial the evidence of the physicians was offered, but was excluded. People v. McCoy, 45 How. Pr. 216. Recent court of appeals cases indicate a different policy on the subject. Thus, the court held that to compel a defendant to stand up in court for the purpose of being identified did not impugn his constitutional privileges (People v. Gardner, 144 N. Y. 119); also that where the shoes of the defendants were forcibly taken from them and compared with footprints in the snow, evidence of correspondence of the shoes with the footprints was not inadmissible. People v. Van Wormer, 175 N. Y. 188.

The latest cases have, it is believed, finally settled the proposition that the forcible seizure, or illegal obtaining by other means, of books, papers, etc., is no valid objection to their use in evidence if they are pertinent to the issue. The general doctrine had been stated as a theoretical proposition (see Greenleaf on Ev., vol. 1, sec. 245a), and in New York, at least, it is now a practical rule of law. In the recent Adams policy case a number of manifold sheets, together with other strictly private papers, were taken from the defendant's office which had been searched under a search warrant. They were ultimately introduced in evidence against the defendant over his objection that the result was to compel him to give evidence against himself in violation of his constitutional right. The courts held that the evidence was pertinent, and that the trial court was not under any duty to take notice how it had been obtained, or to frame issues to determine that question; it was pointed out that the objections raised to the evidence did not involve any question of its relevancy, but raised "collateral issues" which the trial court could not undertake to determine. People v. Adams, 176 N. Y. 351, affirmed Adams v. N Y., 192 U. S. 585. The judicial attitude at the present day towards all evidence of the class in question is pithily indicated by Judge Van in the Mills case: "The courts do not look to see who held out the bait, but to see who took it."—*New York Law Journal.*

ALIENS—IS THE ACT GRANTING STATE COURTS THE POWER TO NATURALIZE ALIENS CONSTITUTIONAL?—Strange as it might seem the constitutional right of congress to clothe state courts with jurisdiction to naturalize aliens has never been seriously disputed until the recent case of Levin v. United States. 128 Fed. Rep. 826.

In this case plaintiff in error was convicted for fraudulently procuring certificates of naturalization from the St. Louis Court of Appeals. Counsel for plaintiff in error contended with much ingenuity that a state court has no jurisdiction to admit aliens to citizenship, (1) because congress had no power under the constitution to grant this authority to such a court; and (2) because, if it had that power, a court of common-law jurisdiction created by a state has no authority to accept or to exercise this power in the absence of legislative permission so to do from the state which established it. His argument in support of his first position runs in this way:

"The constitution provides that 'the judicial power of the United States shall be vested in one Supreme Court and in such inferior courts as the congress may from time to time ordain and establish' (art. 3, sec. 1), and that 'the judicial power shall extend to all cases' specified in art. 3, sec. 2. Congress has no authority to grant any portion of this judicial power of the nation to any other courts than those created under these sections of the constitution. Martin v. Hunter's Lessee, 1 Wheat. 304, 328–330, 4 L. Ed. 97; Houston v. Moore, 5 Wheat. 1, 27, 5 L. Ed. 19. The admission of aliens to citizenship is a judicial function. It is the exercise of judicial power. Spratt v. Spratt, 4 Pet. 393, 407, 7 L. Ed. 171. Therefore the congress has no power to grant to a court of a state the judicial power to admit aliens to citizenship, and sec. 2165 and all other acts of congress which by their terms bestowed this authority upon state courts are unconstitutional and void. In support of his second proposition he argues that a court of a state derives all its powers from the political entity which creates it; that, while such a court may perform judicial functions permitted by national legislation in cases in which the general power to discharge these functions is granted or allowed to it by the

legislation of the state which creates it, no new or additional authority can be conferred upon it by the laws of the nation, and none can be exercised by it unless it is granted by the state laws which create the court and vest and define its jurisdiction, and, inasmuch as the legislation of the state of Missouri has never granted to any court of that state the power or the permission to naturalize aliens in accordance with the laws of the United States, none of the courts of that state may lawfully exercise this authority."

The United States Court of Appeals for the Eighth Circuit while recognizing the force of the argument thus advanced claims that it is too late a day for the consideration of such an argument. The court said on this point:

"These propositions and arguments of the counsel for the plaintiff in error are plausible and cogent. They might well have challenged debate —possibly they might have changed the course of legislation and of action—if they had been presented to the supreme court one hundred years ago. At this late day, however, after the courts of the states have for more than a century, with the uniform acquiescence and consent of all the departments of the national government and of the state governments, exercised this authority to naturalize aliens granted to them by the acts of congress, there is one answer which is equally fatal to both the propositions which counsel for the plaintiff in error here presents. It is that the contemporaneous interpretation of the provisions of the constitution relative to this subject by those who framed it, the concurrence of statesmen, legislators and judges in that construction, the acquiescence and uninterrupted practice of all the departments of the government in the same interpretation for more than one hundred years, conclusively determine their meaning and effect, and place them beyond the realm of doubt or question. This contemporaneous, continuous and uniform affirmance of the constitutionality of the grant to the state courts of this power to naturalize aliens, and this uninterrupted practice of the state courts to exercise the power thus bestowed upon them, are too long continued, too strong, too obstinate, to be controlled or shaken now. It is too late to question the constitutionality of the devolution of this authority upon the courts of the states, or their jurisdiction to exercise it. Those issues have been settled by prescription and practice, and they are no longer open to debate or question.

The plaintiff in error is not without authority to sustain his position. In Martin v. Hunter's Lesseee, 1 Wheat. (U. S.) 304, Mr. Justice Story declared that congress could not vest any portion of the judicial power of the nation in courts which it did not itself ordain and establish. And in the case of *Ex parte* Knowles, 5 Cal. 300, the Supreme Court of California held that, while congress had no power to confer jurisdiction upon the courts of a state to admit aliens to citizenship, yet such courts might exercise that power in cases where its existence was recognized by the legislation of the state which established it.

The court in the principal case in addressing itself to the question as to the right of a state court to exercise jurisdiction to naturalize citizens without the direct approval of its own legislature, said: "Nor does the contention that the courts of the state of Missouri having common law jurisdiction are without authority to accept or to exercise the judicial power to naturalize aliens conferred upon them has never by any legislative action empowered or permitted them to do so, commend itself to our judgment. The suggestion is noted that the legislature of a state might prohibit its courts from exercising the power to naturalize aliens, and that this prohibition would be fatal to the devolution of the congressional authority. No such inhibition, however, has been imposed upon the courts of Missouri, and it is unnecessary and would be injudicious to consider and determine in this case what the effect of such legislation might be. * * * When the United States offered admission to the Union to the people of Missouri, it made this offer subject to the patent condition that the constitution of the United States, and the laws that had been made and should be made by congress in accordance with its provisions, should become the supreme law of the new state, binding alike upon all its inhabitants, whether laymen or lawyers, citizens or judges. The people of Missouri accepted this offer and its condition, and became a part of the nation. Thereupon the constitution of the United States, and the laws enacted in accordance with it, which then conferred upon the courts of the states the judicial power to admit aliens to citizenship, became a part of the supreme law of the new state of Missouri, which the people of that state, by their acceptance of the offer of admission, had contracted should be obeyed and executed by the citizens, the judges, and the courts of their state. The acceptance by the people of Missouri of this offer of admission, in view of the power which had then been granted by the congress to certain courts of the states to admit aliens to citizenship, and in view of the practice of those courts to exercise this jurisdiction, which had then prevailed for nearly three decades, gave to the courts of Missouri plenary jurisdiction to exercise any power to admit aliens to citizenship which the congress had then conferred or might thereafter bestow upon them the provision of the constitution applicable to that subject. Claflin v. Houseman, 93 U. S. 130, 136-142, 23 L. Ed. 833; *Ex parte* Gist, 26 Ala. 156, 164; Prigg v. Pennsylvania, 16 Pet. 536, 620, 10 L. Ed. 1060; Robertson v. Baldwin, 165 U. S. 275, 280, 17 Sup. Ct. Rep. 326, 41 L. Ed. 715. The resistless conclusion is that the congress of the United States was by sec. 8, art. 1, of the constitution granted the necessary authority to vest in the courts of the states having common-law jurisdiction the judicial power to admit

qualified aliens to citizenship; that, in the absence of legislative authority or permission from the states which created them, such courts may lawfully exercise this power, and that sec. 2165 of the Revised Statutes is neither unconstitutional nor invalid.

LIABILITY OF INSURERS AND RIGHTS OF EMPLOYEES UNDER EMPLOYERS' LIABILITY INSURANCE POLICIES.

The modern developments of insurance law have given rise to a new class of controversies involving the rights of employees and the liability of insurers, under what is known as an Employer's Liability Insurance Policy. It is not the purpose of these contracts to recompense the employee for financial loss, mental or physical suffering to which an accident has subjected him while in the employment of the insured; for it is questionable if an employer can obtain insurance of this character for the benefit of an employee, in the absence of an enabling statute.[1] Nor is such contract intended to reimburse the employer for loss of the employee's services occasioned by an accidental injury. This, though a legitimate branch of insurance, is wholly distinct from the one under consideration. Employers' liability policies are designed to save the employer harmless in cases where, through his fault, an employee sustains an injury by which the employer is either rendered liable to pay damages or does actually pay damages to exonerate himself from legal liability. The effect of such insurance seems to be to free the employer from the consequences of his own neglect, and it might plausibly be argued that this result is against public policy and hence the contract is void. On the contrary, it is for the advantage of the injured employee that the employer should secure funds with which to discharge his liability toward his servant; and practically the policy does not operate to relax the master's carefulness toward those in his employ, inasmuch as it is usually for a limited liability and the insured can never know for what excess above this amount he may be liable at the suit of the servant, if injuries result from his lack of care. This uncertainty is sufficient to render him no less cautious than if he were uninsured.

The question most frequently discussed in connection with these contracts has been: "When does the insurer's liability become fixed?" This is made to depend upon the particular language used in the policy. If it limit the insurance company's liability to loss actually suffered by the employer, such terms will control; as where the policy reads: "No action shall lie against the company as respects any loss under this policy unless it shall be brought by the assured himself to reimburse him for loss actually sustained and paid by him in satisfaction of a judgment after trial of the issue;"[2] or where its terms were, "against loss from liability for injuries suffered by any employee;" in which case the court determined that "it was not a contract of insurance against liability, but of indemnity against loss by reason of liability."[3] The exact time at which this loss occurs is not always apparent. Where payment is made by the insured to the employee or his representatives after judgment rendered, no question usually arises, except as to whether the injury was one covered by the policy. If no payment is made to the employee, but the insured becomes insolvent and surrenders his assets to his trustee in bankruptcy, for the benefit of his creditors, of whom the injured employee is one, in that event there has been a payment *pro tanto* if not in money, at least in property, and the liability of the insurance company is absolute; the amount being determined by taking the assets of the insured (exclusive of the policy) and the claims against his estate (exclusive of the claim of the employee), and calculating the percentage which the bankrupt's assets would pay upon these claims; and a corresponding percentage of the employee's claim is the amount for which the insurance company is liable. In other words, the employee should realize no larger per cent upon his claim from the estate of the employer than is realized by the other creditors of the latter.[4]

The situation becomes more involved when the actual payment by the insured is rendered impossible by reason of circumstances unforeseen by the parties to the insurance

[1] Embler v. Hartford Steam Boiler Inspection Co., 158 N. Y. 431, 53 N. E. Rep. 212, 44 L. R. A. 512.

[2] Moses v. Traveler's Ins. Co., 49 Atl. Rep. 720.

[3] Frye v. Bath Gas Co., 97 Me. 241, 59 L. R. A. 444.

[4] Moses v. Traveler's Ins. Co., 49 Atl. Rep. 720.

contract and beyond the control of the employer. This may occur where, after judgment recovered by the employee, the employer becomes bankrupt and the judgment creditor is enjoined from collecting his claim. Here, it has been held, payment as a condition precedent to the insurer's liability is dispensed with by the operation of a superior and unanticipated agency; at least in a court of equity and under circumstances where no injustice would be done the insurance company by compelling it to pay the amount stipulated.[5] This rule would not hold in a court of law, where actual loss by the insured is an express condition precedent to recovery from the insurer.

If the responsibility of the insurance company does not depend upon actual loss by the employer, its duty to make immediate payment will arise on the mere liability of the master to answer in damages to his servant. Thus, where the policy declared that the insurer would pay to the employer "such sums for which the employer shall become liable to its employees," it was considered immaterial that no payment had been made by the insured to the injured servant,[6] as the insurance was against liability and not against damage. So, if the wording is "against liability for damages," the same result is reached and the insurer becomes answerable at least from the moment judgment is rendered against the employer, or when the amount of payment is agreed upon by the employer and the employee with the consent of the insurance company.[7]

Again, where the policy read: "The company will pay to the insured all damages with which the insured may by legally charged or which the insured may be required to pay for injuries, etc.," the liability was deemed to be fixed and determined when a judgment had been rendered against the insured and had not been appealed from, though it still remained unpaid.[8] If, however, the cause was yet pending, though a judgment had been rendered, no liability for immediate payment existed.[9]

No court has gone farther in fixing the liability of the insurer than that of New Jersey,[10] which holds that under the following contract: "The company will pay to the insured all damages with which the insured may be legally charged under the common law or any statute," liability became fixed when the accident occurred and not when the judgment was recovered. The court says: "In the case of a judgment against the party insured, under one of these policies for damages for the result of an accident, the liability, though legally fixed at that time, relates back to the accident itself. In contemplation of the law, the insured either was or was not, from the first, liable for the consequences of the accident; and the presumption is that the result of an investigation of the facts was never doubtful from the first, and always sure to result according to the actual fact. So that the recovery of the judgment cannot be held or treated in the law as a contingency which may or may not happen, but a mere judicial ascertainment of the intrinsic character of the occurrence which determined the liability of the insured." It will be observed that this is not equivalent to holding that payment must be made by the insurer as soon as an accident occurs. It is only an assertion that where the accident has been followed by a judgment, not appealed from, the liability relates to the time of the casualty, though the duty to pay the face of the policy arises only upon recovery of a judgment by the employee against his employer.

Not infrequently the other terms of a policy may disclose a clear intention to fix the insurer's liability as soon as the legal responsibility of the insured occurs. Common provisions are, that the insurer shall have the exclusive right to defend all actions brought by the injured employees, and the employer agrees not to settle any claim or incur any expense except at his own cost; and he further promises that he will not interfere in any negotiations for settlement, nor in any legal proceedings without the consent of the insurer. A further clause is often inserted, providing that no claim shall be filed against the insurer after the time within which the in-

[5] Beacon Lamp Co. v. Traveler's Ins. Co., 61 N. J. Eq. 59.

[6] Hoven v. West Superior Iron Co., 93 Wis. 201, 67 N. W. Rep. 46, 32 L. R. A. 388.

[7] Pickett v. Fidelity Co., 60 S. Car. 477, 38 S. E. Rep. 160, 629; Fenton v. Fidelity Co., 36 Oreg. 283, 56 Pac. Rep. 1096, 48 L. R. A. 776.

[8] Amer. Employer's Ins. Co. v. Fordyce, 62 Ark. 562.

[9] Fidelity Co. v. Fordyce, 64 Ark. 174.

[10] Ross v. Amer. Emp. Liability Co., 56 N. J. Eq. 41, 38 Atl. Rep. 22.

jured employee might bring suit; except that where the suit of an injured employee is pending at the time the statute of limitations would have run against such claims, and judgment is rendered for the plaintiff, the insured may come against the insurer within a specified number of days thereafter. Where such clauses are contained in the policy, they show that it is a contract of insurance against liability for damages and not an indemnity policy against actual loss. As has been said: "If the plaintiff is forbidden to settle a claim for an accident of this kind, we fail to see how it is imperative upon him to pay a judgment rendered against him upon such a claim as a condition precedent to his right of recovery."[11]

The usual methods for enforcing the provisions of this class of contracts is a suit prosecuted by the insured against the insurer. But has the employee, for whose ultimate benefit the contract may be thought to exist, no rights thereunder, which he can enforce against the insurer? If the policy be one insuring the master against actual damage, the servant would have no remedy over against the insurance company, for loss does not occur until he is paid, and thereafter he is a disinterested party.[12] If the policy is designed to indemnify for mere liability and the insurer has not paid the sum for which it is answerable to the insured, the employee, holding a judgment against his employer for injuries, may reach the insurer by garnishment;[13] and probably his rights could be rendered effectual by a creditor's bill or by proceedings supplemental to execution.

But what if the insured has become insolvent and is in the hands of a receiver or of the bankruptcy court; what will be the amount which the employee, now armed with a judgment, is to receive from the insurer? Is he to work out his rights through the employer's estate by sharing in the proceeds of the policy as an asset? In that event the insurance money will be divided among various creditors and the employee will receive only a fractional part. Is he to claim against the insurer directly, and have his judgment paid in full, or so far as the face of the policy will liquidate it? If he does this, he may receive a larger percentage of his claim than will other creditors of the employer. This last result would be legally unobjectionable, if it could properly be said that the contract was entered into for the benefit of the employee, and that the insurer has become the principal debtor and the insured is only a surety. In that case the employer would stand on the footing of a secured creditor, and it would not lie in the mouth of any other claimant to object to the employee forcing the principal to pay his just obligation, especially as thereby the assets of the insolvent master (the surety) would be proportionately exonerated.[14] The fatal weakness of this position is, that as between the insurer and the insured, the employee is unknown. He may not be in the master's employ when the policy is executed; he is not the person intended directly to be benefitted, for there is no duty resting upon the master under the usual insurance contract to pay the employee out of the funds realized from the policy. The moneys paid over to the employer by the insurer do not constitute a trust fund for the servant's benefit,[15] but are the absolute property of the employer, to be disposed of as he pleases. The mere fact that the latter's claim against the insurer may be attached by garnishment or by equitable process, does not alter the situation, for so may numerous other debts owed to the insured by third parties be reached at the suit of a creditor. Nay more; even in jurisdictions where a contract made between two parties for the benefit of a third party can be enforced by the latter suing in his own name, it has been held that the employee cannot recover directly from the insurance company, because of lack of privity, although the policy provides that payment shall be made to the assured for the benefit of the injured person.[16]

The same rule has been applied where a policy was issued to an employer "to meet

[11] Anoka Lumber Co. v. Fidelity Co., 63 Minn. 286, 65 N. W. Rep. 353, 30 L. R. A. 689; Fenton v. Fidelity Co., 36 Oreg. 283, 56 Pac. Rep. 1096, 48 L. R. A. 776; Fidelity Co. v. Fordyce, 64 Ark. 174; Fritchie v. Miller's Extract Co., 197 Pa. 401, 47 Atl. Rep. 351.

[12] Frye v. Bath Gas Co., 97 Me. 241, 59 L. R. A. 444.

[13] Fritchie v. Miller's Extract Co., 197 Pa. 401, 47 Atl. Rep. 351; Hoven v. West Superior Co., 93 Wis. 201, 67 N. W. Rep. 46, 32 L. R. A. 388.

[14] Beacon Lamp Co. v. Traveler's Co., 61 N. J. Eq. 59.

[15] Bain v. Atkins (Mass.), 57 L. R. A. 791.

[16] Embler v. Hartford Co., 158 N. Y. 431, 53 N. E. Rep. 212, 44 L. R. A. 512.

any risk or liability for accidents" to his employees, and after a fatal injury to a workman, the master collected a considerable sum from the insurer to discharge its liability for such death; it was held that this amount was not an asset in the hands of the employer for the benefit of the estate of the deceased, and hence could not be reached by the latter's creditor.[17]

The correct position seems therefore to be, that if the policy insures against actual damage, sustained by the insured, the employee cannot recover from the insurer any greater percentage of his claim than is paid out of the employer's estate to other creditors of the bankrupt,[18] but if the insurance is against liabity for damages, it is an asset in the hands of the trustee in bankruptcy and its proceeds should be divided *pro rata* among the various creditors, including the injured employee, since the latter cannot be said to have any peculiar rights therein which are superior to those of any other creditor.

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[17] Hawkins v. McCalla, 95 Ga. 192, 22 S. E. Rep. 141.
[18] Moses v. Traveler's Ins. Co., 49 Atl. Rep. 720.

DESCENT AND DISTRIBUTION—HOMICIDE BY HEIR AS WORKING A FORFEITURE OF HIS RIGHTS.

BOX v. LANIER.

Supreme Court of Tennessee, March 19, 1904.

Where the assured delivered to his wife a life policy, payable to her if she should survive him, otherwise to his legal representatives, with the intention that she should keep it alive, and that it should belong to her, there was a valid parol assignment to her, vesting his contingent interest in her.

The common-law rule that a husband who survives his wife becomes the owner of her choses in action does not apply where he makes himself the survivor by feloniously taking her life, and hence in such a case his legal representatives cannot recover, as against her representatives, the proceeds of a life policy owned by her.

Const. art. 1, § 12, providing that no conviction shall work forfeiture of estate, does not apply to a refusal to allow a recovery by the legal representatives of a husband of the proceeds of a life policy owned by the wife, whom he had murdered, and whom he survived, since such proceeds never belonged to his estate.

BEARD, C. J.: This is a contest between complainant, as administrator of Mrs. Bettie W. Justice, deceased, and the defendant, who is administrator of her late husband, A. E. Justice, over the proceeds of an insurance policy upon the life of the husband. These proceeds were paid over to the defendant administrator upon an agreement between him and the complainant that this was to be without prejudice to the rights of the latter, and that they were to be held by him to await the determination of this suit.

The facts out of which this controversy grows are that on the 8th of February, 1900—about two years after the marriage of the two deceased parties—the husband obtained an insurance policy on his life in the sum of $10,000, which was made "payable to the wife of the assured should she survive; otherwise to his executors, administrators, or assigns." Immediately after its issuance the husband delivered the policy to his wife, with the statement that it was her policy, and that she must pay the premiums accruing on it. This was done by her, so that out of her own estate all of the premiums were paid by her and the policy from the time it was so delivered to her until her death was in her possession and under her exclusive control.

The court of chancery appeals finds that the assured took out this policy for the benefit of his wife in view of her means received and used by him, and "with the intention that she should keep it alive, * * * and that it should belong to her." As confirmatory of the purpose of the husband, both with regard to the issuance and delivery of the policy to the wife, that court finds that the husband on different occasions and to different parties said that it belonged to his wife, and that these declarations, "coupled with the delivery to and the payment of all premiums by her at his request, clearly indicated an assignment by him of the policy to her; so as, under our authorities, to constitute it thereafter her separate estate."

Subsequently to these transactions, to-wit, in May, 1902, so obnoxious had the husband, by reason of his conduct, become to his wife, she filed in the chancery court of Humphreys county, in this state, a bill for divorce alleging as ground therefor cruel and inhuman treatment, drunkenness, and unfaithfulness to his marriage vows. It was also averred by her that he had squandered large sums of money belonging to her estate in immoral dissipation, and an injunction was prayed restraining him from disposing of certain property of which he had then possession, and also from him coming to her home, or in anyway interfering with her.

This bill was filed during the temporary absence of the husband from the town of Waverly, where the parties resided. On his return, and after the service of process, he made ineffectual efforts at a reconciliation with his wife. Disappointed in these efforts, on the 19th of May, 1902, having armed himself with a pistol, he entered a place of concealment near the home of his wife, where he remained until he saw her come out, when, rushing upon her, he shot her to death, and then turning the pistol upon himself, he inflicted a mortal wound, from the effect of which he died some four hours later.

Upon this state of facts the present contro-

versy arises. The complainant, for the estate of Mrs. Justice, insists that the policy in question was a right existing in his intestate at the time of her death, and that while, under ordinary or normal conditions, it would have vested in her husband surviving *jure mariti*, yet, inasmuch as this survivorship was brought about by his felonious act, his estate will not be permitted to make profit out of it, but the policy or its proceeds will be preserved to the representative of her estate for the benefit of her children, who are her distributees.

On the other hand, it is contended by the defendant that the representative of the husband had, by the words of the policy, a fixed right in the same, defeasible only upon the wife surviving, and, if this is not so, then the husband's right accrued to him *jure mariti*, and that this right should not be forfeited by the murder of his wife.

Before considering these respective contentions, it is proper to arrive at a true interpretation of the policy with the view of ascertaining the respective rights of these parties at the time of the commission of the felony in question. As has already been stated, the policy was upon the life of the husband, payable to the wife upon condition that she outlived him; in other words, the title to the proceeds of the policy, if kept alive by the payment of the premiums, would have been the property of the wife in the event she outlived her husband. This right was defeasible alone upon her dying first. It was only upon the happening of this contingency that either he or his assigns or representatives would be entitled to those proceeds. It is insisted, however, that no interest by the terms of the policy accrued to the husband, but that his administrators or executors, as a special class, were to take in the event the contingency happened in the interest of his estate, but independent of him. This contention, we think, is unsound.

Mr. Biddle, in volume 1, § 287, of his work on Insurance, says: "Usually a policy taken by the insured payable to the insured's heirs, administrators, and assigns goes to the estate of the insured, and, of course, may be assigned by him in his lifetime." In support of this context the author cites the following cases which more or less go to sustain it: Rawson v. Jones, 52 Ga. 458; Swift v. Rwy. Passenger, etc., Assn., 96 Ill. 309; Pilcher v. N. Y. Life Ins. Co., 33 La. Ann. 322; New York Life Ins. Co. v. Flack. 3 Md. 341, 56 Am. Dec. 742; Winchester v. Stebbins, 16 Gray (Mass.), 52; Wason v. Colburn, 99 Mass. 342; Conn. Mut. Life Ins. Co. v. Ryan, 8 Mo. App. 535; Edington v. Ætna Life Ins. Co., 13 Hun, 543; Williams v. Corson, 2 Tenn. Ch. 269.

In Mutual Life Insurance Company v. Armstrong, 117 U. S. 591, 6 Sup. Ct. Rep. 877, 29 L. Ed. 997, it seems that an endowment policy was issued upon the life of one Armstrong, in which it was agreed that the company should pay to the assured or his assigns, on the 8th of December, 1897, or, if he should die before that time, to his legal representatives, the amount of the policy. It was issued at the instance of one Hunter, who paid the premium upon it, and took an assignment thereof from the assured. Soon after its issuance, Armstrong was murdered. Suspicion falling upon the assignee, Hunter, as the perpetrator of the murder, he was indicted and convicted. Subsequently he was hung. The administratrix of Armstrong instituted suit upon the policy. Upon the trial of the case, upon the assumption that the insurance money was payable, in case that death occurred before the expiration of the endowment term, to the legal representatives of the assured, and that the policy was not assignable by him, certain evidence was rejected by the court, and its action in that respect was assigned as error in the Supreme Court of the United States. With regard to this that court said: "The ruling cannot be upheld. The position that the assignment did not take effect because the assured died before the expiration of the policy is untenable. The provision for payment in such case to his legal representatives was intended to meet the contingency of his dying without having disposed of his interest, and not to limit his power over the contract during his life, and pass the insurance to those who should represent him after his death."

We think, upon the authorities, there can be no doubt of the absolute control of the assured over this policy to the extent, at least, of the contingent interest which he had in it, and that an assignment made by him, or a disposition of it by his will, would convey to his assignee or to his legatee whatever interest might accrue to him from this policy; and we are further satisfied that his assignment by parol of the policy to his wife divested him of all contingent interest in it, and vested this interest, in addition to that she already had by its terms, in his wife, and that upon her death leaving him surviving he would take, not under the terms of the policy, but by virtue of his right as surviving husband.

That a parol assignment accompanied by delivery of the policy to the wife was sufficient to vest her with the sole interest in this policy is settled by the authorities. In Chapman v. McIlwrath, 77 Mo. 38, 46 Am. Rep. 1, it appears that the policy was made payable to the assured, his executors or his assigns. After his marriage he said to his wife that it was taken out for her benefit, and he delivered it to her, saying that it was his purpose to vest her with the title, to her sole and separate use. After this delivery it was kept by the wife in her possession until her husband's death. In a contest between the creditors of the husband and the widow it was held that this was a good assignment.

Mr. Phillips in volume 1 of his work on Insurance (4th Ed.), § 880, says: "Policies are usually assigned in writing, but a mere verbal assignment and delivery of the policy gives to the assignee an equitable right to the proceeds where the

policy itself contains no provision to the contrary." To the same effect is Bliss on Life Insurance, 546. Many cases may be found announcing the same doctrine not only with regard to policies of insurance, but also as to other choses in action, among which are: Leinkauf v. Calman, 110 N. Y. 50, 17 N. E. Rep. 389; Thompson v. Emery, 27 N. H. 269; Neve v. Charleston Ins. Co., 2 McMul. (S. C.) 237; Marcus v. St. Louis Mut. Life Ins. Co., 68 N. Y. 625; Jones v. Gibbons, 9 Vesey, 407.

So it is we are satisfied that after this parol assignment of the husband to his wife, supplementing as it did the provision of the policy which made the proceeds primarily payable to her in the event she outlived her husband, that it stood at the time of her murder exactly as if it had provided originally that it should be payable to her unconditionally upon her husband's death, and that whatever right or interest accrued thereafter to him was as surviving husband.

The right of the husband to the choses in action of the wife by reason of his survivorship rests upon a rule of the common-law of this state, and not upon any statutory enactment. It is impossible to concede, however, that the common-law ever contemplated that this rule was to be applied in favor of her husband who makes himself a survivor by the felonious homicide of his wife. If, instead of paying the policy, the insurance company had resisted, and the husband or his representatives were undertaking to enforce payment upon the ground that the contract did not provide for a forfeiture of his rights on account of his felonious act, there can be no doubt upon reason and authority that his or their contention could not be maintained.

In the recent case of Burt v. Union Central Life Ins. Co., 187 U. S. 362, 23 Sup. Ct. Rep. 134, 47 L. Ed. 216, a question akin to the one just stated was considered and determined. The facts of the case were that a policy was issued to Wm. E. Burt upon his own life, payable to his wife if living at the time of his death, otherwise to his executors, administrators, or assigns. Subsequently the assured was, upon indictment, convicted of the murder of his wife, and was afterwards hung in pursuance of the judgment of a court of competent jurisdiction.

During the lifetime of the wife one-half interest of this policy was assigned by her and her husband to the plaintiffs in the action, and after her death the assured conveyed to the same parties the remaining interest in the policy. These assigns were also the sole heirs of the assured, and as such were entitled to the full benefit of the policy, and, claiming as assigns as well as heirs, they instituted suit upon the policy. The court said the question was, "did insurance policies insure against crime?" The court added: "The researches of counsel have found but one case directly in point. Amicable Society v. Bolland, decided by the House of Lords in 1830, reported in 4th Blye, N. R. 194–211. The Lord Chancellor delivering the opinion, after stating the question, answered it in the following brief but cogent words: 'It appears to me that this resolves itself into a very plain and simple consideration. Suppose that in the policy itself this risk had been insured against—that is, that the party insuring had agreed to pay a sum of money year by year upon condition that in the event of his committing a capital felony, and being tried, convicted, and executed for this felony, his assigns shall receive a certain sum of money —is it possible that such a contract could be sustained? Is it not void upon the plainest principles of public policy? * * * Now, if a policy of that description with such a form of condition, inserted in it in express terms, cannot, on grounds of public policy, be sustained, how is it to be contended that in a policy expressed in such terms as the present, and after the events which have happened, that we can sustain such a claim? Can we, in considering this policy, give to it the effect of that insertion which, if expressed in terms, would have rendered the policy, so far as that condition went, at least altogether void?' "

The Supreme Court of the United States, in an opinion embodying this quotation from the English case, and after a review of the authorities, held that the suit of the assignees was not maintainable.

It is true in the present case that the insurance company made no contest, but, conceding its liability, paid over the proceeds of the policy, and they await the determination of this suit. But can it be successfully contended that a claim resting upon a felonious act, which might have been resisted by the insurance company, has acquired more virtue when it is now asserted by the representative of the murderer to the proceeds of that policy? Can those who represent the husband, who first by the felonious destruction of the life of his wife, and then as a *felo de se* has accelerated the maturity of t

the fruits of his crime under the doctrine of *jure mariti?* It is true no case has been called to our attention where such a claim has been either asserted or repelled. The courts have been called on to consider cases where statutory rights have been insisted on though they rested on the felony of the several parties setting them up, or by others claiming through them. Riggs v. Palmer, 115 N. Y. 506, 22 N. E. Rep. 188, 5 L. R. A. 340, 12 Am. St. Rep. 819, is one of the earliest of the cases in the United States in which this question was considered, and by a majority opinion of certainly great moral force it was held that the intention of the legislature in the general laws passed for the devolution of property by will or descent was that they should not operate in favor of one who murdered his ancestor or benefactor in order speedily to come into possession of his estate, either as devisee, legatee or heir at law. As against this view, however, are the cases of Owens v. Owens, 100 N. Car. 240, 6 S. E. Rep. 794; Deem v. Milliken, 6 Ohio Cir. Ct. Rep. 357

affirmed in 53 Ohio St. 668, 44 N. E. Rep. 1134; Shellenberger v. Ransom, 41 Neb. 631, 59 N. W Rep. 935, 25 L. R. A. 564; Carpenter's Estate, 170 Pa. 203, 32 Atl. Rep. 637, 29 L. R. A. 145, 50 Am. St. Rep. 765.

It will thus be seen that the weight of judicial authority is against the holding of the New York court, and it may be conceded that the better legal reasoning is to be found in the opinions dissenting from the views of that court. We do not think, however, that any of these cases meet or control the question with which we are now dealing, and we do not rely upon either one of them for support of conclusion in this case. For it may be true that it would be a stretch of judicial authority to hold that an unambiguous statute providing a line of devolution of property should be interpreted to mean that this line was to be broken upon the felonious homicide of the ancestor or testator by the one next in succession, but is this equally true as to one who rests his claim on this common-law rule?

It is universally conceded that the fundamental principles of the common law are unchangeable, yet the courts recognize the necessity of flexibility in the application of old rules to new cases, so as to enable them to adopt these rules "to the ever-varying conditions and emergencies of human society." Thus, in Woodman v. Pitman, 79 Me. 456, 10 Atl. Rep. 321, 1 Am. St. Rep. 342, it is said: "The inexhaustible and ever-changing complications in human affairs are constantly presenting new questions and new conditions which the law must provide for as they arise, and the law has expansive and adaptive force enough to respond to the demands thus made of it, not by subverting, but by framing new combinations, and making new applications out of its already established principles; the result produced being 'only the new corn that cometh out of oldfields.'"

This court, in Jacob v. State, 3 Humph. 493, announces the same general doctrine in these words: "The common law of the country will never be entirely stationary, but will be modified and extended by analogy, construction and custom so as to embrace new relations springing up from time to time for an amelioration or change of society. The present common law of England is as dissimilar from that of Edward III as is the present state of society. And we apprehend that no one could be found to contend that hundreds of principles which have in modern times been examined, argued and determined by the judges are not principles of the common law because not found in the books of that period. They are held to be great and immutable principles, which have slumbered in their depositories because the occasion which called for their exposition had not arisen. The common law, then, is not like a statute, fixed and immutable, but by positive enactment, except where a principle has been adjudged as the rule of action."

It has been well said that there are certain general and fundamental maxims of the common law which control laws as well as contracts. Among these are: "No one shall be permitted to profit by his own fraud, or to take advantage of his own wrong, or to found any claim upon his own iniquity, or to acquire property by his own crime. These maxims are adopted by public policy, and have their foundation in universal law administered in all civilized countries." These maxims embodied in the common law, and constituting an essential part of its warp and woof, are found announced both in text books and in reported cases. Without their recognition and enforcement by the courts, their judgments would excite the indignation of all right-thinking people. The first of these maxims is applied in order to prevent one from taking the benefit of his own fraud. Why should not the last be enforced so as to forbid a party receiving the fruits of his own crime?

The last of these maxims cannot be reconciled with the rule insisted on by the administrator of A. E. Justice. This rule, he insists, gives to him as a matter of law the proceeds of this policy. Though steeped in crime, and without reference to whether the prior death of Mrs. Justice came naturally or was the result of the felonious assault of her husband, yet his contention is that the policy with its proceeds pasfed *jure mariti* to this husband, and upon his death to himself as the legal representative. If this be true, it logically follows that, if he had killed the wife for the purpose of setting in motion this rule, and under it becoming the absolute owner of her choses in action, his common-law right would be enforced. Such a result, if essential, we think would be a reproach to the jurisprudence of the country, and should arouse the legislative conscience to speedy corrective legislation.

But we do not think that it is essential. The rule in question, though statutory in England, is a common-law rule of property with us, administered by reason of the relation of husband and wife and of the respective rights and obligations growing out of this relation. Carried to the length now insisted upon, it necessarily encounters, among others, the fundamental maxims already referred to that no man shall found a claim upon his own iniquity, or acquire property by his own crime. The rule thus contended for and these underlying principles of the common law cannot stand together. They are utterly irreconcilable if the present contention is sound. But we do not think it sound. To the contrary, we are satisfied that the rule and these maxims find their consistency in the flexibility of the common law and its power of adapting itself to new conditions and new cases. The present is one calling for a limitation on the rule in question, to-wit, that it shall not apply where it is called into being by the crime of the husband. Thus qualified, there is perfect reconciliation between the rule and these maxims. Nor do we regard this as an enunciation of a new principle just called into life, but rather, as is said in Jacob v. The State,

supra, one of those "great and immutable principles which have slumbered in their depositories because the occasion which called for their exposition had not arisen" heretofore.

As was said by the court in Mutual Life Insurance Company v. Armstrong: "It would be a reproach to the jurisprudence of the country if one could recover insurance money payable on the death of a party whose life he had feloniously taken. As well might he recover insurance money upon a building that he had wilfully fired." In Cleaver v. Mutual Reserve Fund Life Association, L. R. 1 Q. B. Div. 147, there was a controversy over a policy taken out by James Maybrick, a member of the association, upon his life, payable to Florence E. Maybrick, his wife, if living at the time of the death of the husband; otherwise to his legal representatives. The assured died in 1889, and after his death Florence E. Maybrick assigned by deed to Cleaver all of her interest in the policy. The controversy in the case was between the assignee, the insurance company, and the administrators of the deceased. The association undertook to resist recovery on this policy upon the fact established in the criminal prosecution against the surviving wife that the assured had died from poison feloniously administered by her. The defense, so far as the legal representatives of the deceased was concerned, was held not maintainable, but in so far as the surviving wife and her assignee the court held that her felonious act deprived her of all interest in the policy, as well as one claiming through her. Esher, M. R., said: "The rule of public policy in such a case prevents the person guilty of the death of the insured, or any person claiming through such person, from taking the money." Fry, L. J., in dealing with the same question in a separate opinion, used this language: "It appears to me that no system of jurisprudence can with reason include amongst the rights which it enforces the rights directly resulting to the person asserting them from the crime of that person. If no action can arise from fraud, it seems impossible to suppose that it can arise from felony or misdemeanor. It may be that there is no authority directly asserting the existence of the principle; but the decision in the House of Lords in Fauntleroy's Case, 4 Blye, N. S. 194, appears to proceed on this principle, and to be a particular illustration of it. This principle of public policy, like all such principles, must be applied to all cases to which it can be applied, without reference to the particular character of the right asserted or the form of its assertion. In Fauntleroy's Case * * * it was held to prevent the assignees of a forger from claiming the benefit of a policy on his death at the hands of justice by reason of his forgery. It would equally apply, it appears to me, to the case of a *cestui que trust* asserting a right as such by the reason of the murder of the prior tenant for life or of the assured in a policy; and it must be so far regarded in the construction of acts of parliament that general words which might include cases obnoxious to this principle must be read and construed as subject to it."

We think, if it is a sound holding that one named as a payee of a policy by the felonious homicide of the assured is, with his assignee, cut off from receiving the benefit of that policy notwithstanding its expressed terms, that with much more force it can be insisted that one who claims under the common-law rule invoked in this case must be disappointed of a recovery.

This view of the case relieves us from considering the contention that to deprive the surviving husband of this chose in action by reason of his felony is to enforce a forfeiture of estate against him in the face of section 12 of article 1 of the state constitution. The application of the principle, which we hold to be fundamental and controlling in this case, intervenes between him and the property, so that he never acquired an estate and therefore forfeited nothing in it. The result is that the decree of the Court of Chancery Appeals is affirmed.

NOTE.—*Can a Person Become a Beneficiary or Hasten a Beneficial Interest by Means of His Own Crime?*—The question stated as the subject of this note has been the bone of a long and bitter controversy, and just as its determination seemed to be a matter of certainty, the Supreme Court of Tennessee reopens it, alleging in its own vindication that the facts of the principal case necessitate a different rule laid down by the majority of the authorities.

The case of Riggs v. Palmer, 115 N. Y. 506, 22 N. E. Rep. 188, 5 L. R. A. 340, 12 Am. St. Rep. 819, is probably the most celebrated decision on this question. Here it was held by a divided court that a murderer could not take either as heir or legatee, the estate of one whom he has murdered for the purpose of obtaining the property. The court in this case after a laborious and ineffective attempt to justify itself for making an implied exception to a statute by judicial construction, rests itself finally on the celebrated utterance of Justice Field, in the case of New York Mutual Insurance Co. v. Armstrong, 117 U. S. 599, to-wit: "It would be a reproach to the jurisprudence of the country if one could recover insurance money payable on the death of a party whose life he had feloniously taken. As well might he recover insurance money upon a building which he had wilfully fired." This argument, however, is sufficiently answered by Gray, J., dissenting, in the case of Riggs v. Palmer. Judge Gray said: "To concede this view would involve the imposition of an additional punishment or penalty upon the respondent. What power or warrant have the courts to add to the respondent's penalties by depriving him of property? The law has punished him for his crime, and we may not say that it was an insufficient punishment. In the trial and punishment of the respondent, the law has vindicated itself for the outrage which he committed, and further judicial utterances upon the subject of punishment, or deprivation of rights, is barred." See also, however, as modifying the decision of Riggs v. Palmer, the case of Ellerson v. Westcott, 148 N. Y. 149, 42 N. E. Rep. 540. The weight of authority, however, is antagonistic to the position assumed by the court in the case of Riggs v. Palmer; Shellenberger v. Ransom, 41 Neb. 631, 59 N. W. Rep. 935, 25 L. R. A. 564; Owens v. Owens, 100 N. Car. 240, 6 S. E. Rep. 794;

Deem v. Milliken, 53 Ohio St. 668, 44 N. E. Rep. 1134; Carpenter's Case, 170 Pa. 203, 32 Atl. Rep. 637, 29 L. R. A. 145, 50 Am. St. Rep. 765; McKinnon v. Lundy, 24 Ont. Rep. 132. In Shellenberger v. Ransom, *supra*, it was held that the Nebraska statute of descent was plain and unambiguous and by its own operation, and solely in accordance *with its own terms*, vested in the heir such estate as he is thereby entitled, *eo instanto*, upon the death of the intestate, no matter how such death may be occasioned. In Owens v. Owens, *supra*, it was held that where a wife killed her husband she was nevertheless entitled to dower in his lands. In Deem v. Milliken, *supra*, it was held that mortgages made by a son on property received from a mother whom he had murdered and for which he had been hung, were not for that reason void. In Carpenter's Case, *supra*, it has held that one killing his ancestor for an estate which would naturally come to him under the statutes of descents and distributions, may take it under a constitution prohibiting attainders working corruption of blood and forfeiture of estate and statutes providing no penalty for murder except death by hanging.

The very recent and important case of Burt v. Union Central Life Insurace Company, 187 U. S. 362, 23 Sup. Ct. Rep. 139, throws a bombshell into the opposition camp by holding that where a man, who has committed murder, thereafter assigns a policy of insurance on his own life payable to his estate and is subsequently convicted and executed for the crime, the beneficiaries cannot recover on the policy. The crime of the assured is not one of the risks covered by a policy of insurance, and there is an implied obligation on his part to do nothing to wrongfully accellerate the maturity of the policy.

We conclude this note by a reference to the vigorous dissent in the principal case, inspired by that learned and most celebrated of the judges of the Tennessee Supreme Court, Justice John S. Wilkes. Justice Wilkes said:

"In the opinion of the majority it is asked if it can be successfully contended that a claim resting upon a felonious act, which might have been resisted by the insurance company, had acquired more vigor and more virtue when it is asserted by the murderer's representatives, to the proceeds of the policy. We answer that we think such a contention is not only entirely tenable, but wholly legal and logical. It is not the case of the murderer taking the fruits of his own crime. The administrator does not hold under the murderer, nor for his benefit. He holds under the terms of the policy, and for the benefit of the next of kin or creditors of the assured, who are not, or should not be, in any way affected by the crime of the assured. The right to the proceeds does not come to the administrators or next of kin of creditors through any assignment of the murderer, or any descent from him, but solely under the terms of the policy, and the statute applicable thereto. They do not take and do hold under the murderer, but under the policy, and are innocent of all crime and all bad faith. To hold with the majority is, in truth, to visit upon the children the iniquities of the father, which human law does not do, whatever may be the rule of the Divine law."

JETSAM AND FLOTSAM.

WHAT PART OF A COURT'S OPINION IS OBITER DICTUM?

In Union Pac. Ry. v. Mason City, etc., Railroad, in the United States Circuit Court of Appeals, Eighth Circuit (February, 1904. 128 Fed. Rep. 230), the court formulated the following provision as part of its syllabus:

"Where a court places its decision of the ultimate legal issue before it upon its decisions of two legal questions which were pertinent to the issue, debated at the bar, considered and determined in the opinion, the decision of either one of which is sufficient to sustain the determination of the ultimate issue, the decision of each of the two questions and of every pertinent legal question decided in reaching either decision has the binding force of an adjudication, and is not a mere *obiter dictum*."

Discussing this point the court said: "It is, however, contended that it was unnecessary to the determination of the ultimate question before it for the court to decide the latter question at all; that it was unnecessary for it to determine whether or not the Pacific company had the corporate power to make the contract under the acts relating to the Omaha bridge, because it had already decided in the earlier part of its opinion, and before it reached the discussion and decision of this question, that the Pacific company had this power under its general grant of authority to construct and operate railroads. It is contended that because the court based its decision of the ultimate question upon its decisions of these two questions of law, each of which was debated, discussed, and deliberately decided, and the decision of either one of which furnished ample ground to sustain the ultimate conclusion, the decision of one of these preliminary questions was unnecessary, and all that was said about it was *obiter dictum*. This argument, however, proves too much. If it establishes anything it proves that, in every case in which a court places its adjudication of the ultimate issue of law upon its decisions of two or more legal questions, the decision of either of which is sufficient to sustain its adjudication, it decides nothing; that each of its preliminary decisions is unnecessary because the other or the others are sufficient to sustain the adjudication without it, and hence that all of them in turn may be held to be *obiter dicta*. Such is not the law. Where the conclusion of the court may be sustained by decisions of two or more questions of law that are fairly presented for its determination, the province and duty of the court which prepares the opinion and renders the decision is to determine whether it will rest its conclusion upon one or more of these legal issues, and where it places its ultimate adjudication upon two or more propositions of law which it properly discusses and decides, either one of which is sufficient to sustain its conclusion, each decision of each of the propositions is within the limits of the case presented to it, and is a conclusive and binding adjudication of the court. The decisions of all the legal propositions upon which the court places its adjudication of the ultimate legal question are pertinent and logically lead alike to the final conclusion, and they are alike decisive of the questions which they determine (Railroad Co. v. Schutte, 103 U. S. 118, 143, 26 L Ed. 327; Buchner v. Chicago, Milwaukee & N. W. Ry. 60 Wis. 264, 270, 273, 19 N. W. Rep. 56; Alexander v. Worthington, 5 Md. 471, 481; Jones v. Habersham, 107 U. S. 174, 179, 2 Sup. Ct. Rep. 336, 27 L. Ed. 401)."

The soundness of the doctrine so laid down is sufficiently obvious and from one point of view it might seem that the circuit court of appeals discussed a legal axiom too seriously and elaborately. At the same time it may be of practical value that at least

one court has taken pains to emphasize a truth which however is indisputable is quite frequently disregarded in practice. It is not at all uncommon, the wish being father to the thought, for attorneys to distinguish a reported case from one at bar on the ground that expressions in the opinion in the former were unnecessary and *obiter*, when, in reality, the authority may be controlling upon all the grounds considered. It is sometimes no light task to separate what is organically part of a decision from reflections and comments which do not enter into it. But one must always beware of the tendency to argue, as the circuit court of appeals suggests, that because a court intended to decide two points it actually decided nothing.—*New York Law Journal.*

BOOKS RECEIVED.

American Railroad Law. By Simeon E. Baldwin, L.L.D., Boston, Little, Brown & Company, 1904. Sheep, pp. 836. Price $6.00. Review will follow.

Report of the Twenty-sixth Annual Meeting of the American Bar Association, held at Hot Springs, Virginia, August 26, 27 and 28, 1903. Philadelphia, Dando Printing and Publishing Company, 34 South Third St.

HUMOR OF THE LAW.

A small town in Colorado, thirteen thousand two hundred feet above the sea level, boasts a justice of the peace. Recently a suit was tried before him, that stirred the community to its centre, from the fact that one of the parties imported a lawyer from a distant city.

The case dragged itself out to an unprecedented length and the populace had never dreamed that law was so full of objections and exceptions, motions, protests, expostulations and the like, as that lawyer proved it to be.

But there was one thing he could not prolong, and that was the prompt, crisp, decisive "judgment for the plaintiff," as soon as the trial was fairly over.

"Well, sir," said the lawyer, in tones of superiority, "we shall have to take this case to a higher court."

'You can't do that, mister," replied the magistrate.

"And why not, pray?"

"There ain't any higher court. This court is thirteen thousand two hundred feet above the level of the sea, and its several hundred feet the highest court in the country."

WEEKLY DIGEST.

Weekly Digest of ALL the Current Opinions of ALL the State and Territorial Courts of Last Resort, and of all the Federal Courts.

1. ACCIDENT INSURANCE—Burden of Proving Obvious Danger.—The burden of proof that insured met death by unnecessary exposure to danger or obvious risk of injury, within a limited indemnity clause in an accident policy, is on the insurer.—Jamison v. Continental Casualty Co., Mo , 78 S. W. Rep. 812.

2. ADOPTION—Articles of Adoption —By articles of adoption, a father cannot confer on the foster parents any greater rights than he himself possessed, but merely the same rights.—Miller v. Miller, Iowa, 98 N. W. Rep. 631.

3. ADVERSE POSSESSION—Acknowledgment of Superior Title in Another.—Claim of title by adverse possession held defeated by proof of acknowledgment of superior title of another.—Weisman v. Thomson, Tex., 78 S. W. Rep. 728.

4. ADVERSE POSSESSION—Against Municipal Corporation.—As a general rule limitations do not run against a municipal corporation in respect to streets and property held for public use, and adverse possession of such property, however long continued, is of no effect.—Owen v. Village of Brookport, Ill., 69 N. E. Rep. 952.

5. ADVERSE POSSESSION—Extent of Property Occupied.—Where one goes on land as a mere intruder, he acquires title by adverse possession only to so much of the land as he actually occupies.—City of South Omaha v. Meehan, Neb., 98 N. W. Rep. 691.

6. ADVERSE POSSESSION—Toll by Decent. — Adverse possession of property inures, at the death of the possessor, to the benefit of her heirs at law.—Wickes v. Wickes, Md., 56 Atl. Rep. 1017.

7. APPEAL AND ERROR—Abandonment of Error Proceedings.—A litigant cannot have an appealable case considered both as an appeal and as a proceeding in error.—Jones v. Danforth, Neb., 98 N. W. Rep. 668.

8. APPEAL AND ERROR—Action on Assigned Account.—In an action on an assigned account, that the assignor, in testifying, referred to the account annexed to the petition as an exhibit, when it had not been marked as such, held not prejudicial to defendant.—Neal v. Heying, Iowa, 98 N. W. Rep. 603.

9. APPEAL AND ERROR—Improper Argument of Counsel.—An objection to an alleged improper argument of counsel cannot be taken for the first time on appeal.—Chicago City Ry. Co. v. Handy, Ill., 69 N. E. Rep. 917.

10. APPEAL AND ERROR—Pleas in Abatement.—Where, in two actions, pleas in abatement were filed on the ground of another suit pending, held, that the court should have disposed of the suit, which appeared first on his docket.—Guinn v. Elliott, Iowa, 98 N. W. Rep. 625.

11. APPEAL AND ERROR—Trespass to Try Title.—Assignments presenting two questions, the admissibility of testimony for the purpose of proof and for the purpose of contradiction, are not in such f rm as to require consideration on appeal.—Houston & T. C. R. Co. v De Berry, Tex., 78 S. W. Rep. 736.

12. ARBITRATION AND AWARD—Conclusiveness of Arbitrator.—Before the decision of an arbitrator can be held final and conclusive, it must appear that the power to pass upon the subject-matter is clearly given to him.—Jacob v. Weisser, Pa., 56 Atl. Rep. 1065.

13. ASSAULT AND BATTERY—Questions for Jury.—In an action for assault and battery, it was for the jury to say who struck the first blow, whether plaintiff was damaged, and, if so, what the extent of his injuries were.—Sweet v. Boyd, Iowa, 98 N. W. Rep. 601.

14. ASSIGNMENTS FOR BENEFIT OF CREDITORS—Judicial Sale.—On exceptions to a judicial sale of the property of an assignor for creditors, purchaser could not bring in daughter of assignor, when she had no interest in the property.—McAdams & Morford v. Norton's Assignee, Ky., 78 S. W. Rep. 880.

15. ASSOCIATIONS—Liability.—An involuntary association cannot be subjected to an ordinary judgment for debt.—Methodist Episcopal Church South v. Clifton, Tex., 78 S. W. Rep. 732.

16. ASYLUMS—Public Support of Sectarian Institution.—Statutes giving board of education authority to employ teachers for the secular education of orphans in asylums, held not unconstitutional as mandatory.—Sargent v. Board of Education of City of Rochester, N. Y., 69 N. E. Rep. 722.

17. ATTACHMENT—Counterclaim.—In an action by a lessor on a written contract for the lease of a farm, in which a landlord's attachment was issued, the defendant has no counterclaim for the wrongful suing out of the attachment.—Ingram v. Dailey, Iowa, 98 N. W. Rep. 627.

18. ATTACHMENT—Lien on Crops.—Liability to landlord of one who receives and sells crops subject to lien may be treated as contractual, and hence landlord may maintain attachment, under Sand. & H. Dig. § 825.—Judge v. Curtis, Ark., 78 S. W. Rep. 746.

19. BANKRUPTCY—Amendment of Informal Claims — Where papers were filed in bankruptcy proceedings by certain creditors, asserting a lien on a special fund, which was afterwards denied, it was within the power of the court to permit such papers to be amended, so as to conform to the requirements of formal claims, although the year allowed for filing claims had then expired.—*In re* Roeber, U. S. C. C. of App., Second Circuit, 127 Fed. Rep. 122.

20. BANKRUPTCY—Application for Discharge.—An order of a court of bankruptcy dismissing an application for discharge for want of prosecution is in substance and effect one denying a discharge, and is reviewable by appeal.—*In re* Kuffler, U. S. C. C. of App., Second Circuit, 127 Fed Rep. 125.

21. BANKS AND BANKING—Authority of Cashier.—One taking notes from the cashier of a bank held to take with notice of the cashier's limited authority.—German Sav. Bank v. Des Moines Nat. Bank, Iowa, 98 N. W. Rep. 606.

22. BANKRUPTCY—Distribution of Proceeds.—An order distributing the proceeds of real estate sold by a trustee in bankruptcy is reviewable by petition for review, and not by appeal.—*In re* Groetzinger & Sons, U. S. C. C. of App., Third Circuit, 127 Fed. Rep. 124.

23. BANKRUPTCY—Factors —Evidence reviewed, and held to show that a bankrupt, by whom fruit was shipped to consignees for sale, was a mere forwarding agent for the shippers, and not a factor, consigning the goods to the consignees as subfactors.—Bills v. Schliep, U. S. C. C. of App., Second Circuit, 127 Fed. Rep. 103.

24. BANKRUPTCY—Fraudulent Conveyance.—Evidence held insufficient to impeach the validity of a conveyance by a bankrupt as one made to hinder, delay, and defraud his creditors.—Jacobs v. Van Sickle, U. S. C. C. of App., Third Circuit, 127 Fed. Rep. 62.

25. BANKRUPTCY—Partnership Debts.—Where a bankrupt was a member of a firm, but his petition contained no application for a discharge from firm debts, and firm creditors were not made parties to the proceedings, he was not entitled to a discharge from firm obligations.—*In re* Morrison, U. S. D. C., W. D., Tex., 127 Fed. Rep. 186.

26. BANKRUPTCY — Manufacturing Corporations. — A corporation organized to manufacture paper from wood pulp held subject to be declared a bankrupt, though it had never in fact started its factory. — *In re* White Mountain Paper Co., U. S. D. C., D. N. H., 127 Fed. Rep. 180.

27. BANKRUPTCY—Order of Adjudication.—If an adjudication of bankruptcy is supported by a sufficient allegation and proof of an act of bankruptcy, it cannot be set aside on appeal because other acts alleged were neither properly pleaded nor sufficiently proved.—*In re* Lynan, U. S. C. C. of App., Second Circuit, 127 Fed. Rep. 128.

28. BANKRUPTCY—Priority of Claims.—Where a bank advanced money to a bankrupt to pay laborers, on the bankrupt's agreement to assign the payrolls to the bank, it was not entitled to priority of payment from the bankrupt's assets, under Bankr. Act July 1, 1898, giving laborers a preferred claim for wages—*In re* North Carolina Car Co., U. S. D. C., E. D., N. Car., 127 Fed. Rep. 178.

29. BILLS AND NOTES—As Evidence of Transaction.—An admission by the holder of a note sued on that the note was made for an excessive amount, improperly including certain items, discredited the note as evidence. Hollins v. American Union Electric Co., N. J., 56 Atl. Rep. 1041.

30. BILLS AND NOTES—Attorney's Fees.—A petition alleging that the note sued on was not paid at maturity, thereby entitling the holder to attorney's fees, held sufficient, without alleging that suit was brought on the note.—Harris v. Scrivener, Tex., 78 S. W. Rep. 705.

31. BILLS AND NOTES—Place of Payment.—Where a bank is named in a note as the place of payment, it will be presumed, in the absence of evidence appearing on the face of the note to the contrary, that a bank in the maker's home town was meant.—Bailey v. Birkhofer, Iowa, 98 N. W. Rep. 594.

32. BONDS—Liquidated Damages.—An allegation that plaintiff is "endamaged to the amount of one thousand dollars" held sufficient to entitle plaintiff to an inquiry as to his actual damages.—Disosway v. Edwards, N. Car., 46 S. E. Rep. 501.

33. BURGLARY—Pleading and Proof —Description in an information of the place where the burglary was committed held sufficient, without the statement therein of the number of the room, so that proof of such number was unnecessary.—People v. Kelso, Cal., 75 Pac. Rep 904.

34. BUILDING AND LOAN ASSOCIATIONS—Voting Proxies.—Failure of stockholders in a building and loan association to answer a request for a grant of a special proxy to vote held not a consent —McKee v. Home Savings & Trust Co., Iowa, 98 N. W. Rep. 609.

35. BURGLARY—Possession of Stolen Property —The mere possession of recently stolen property, without evidence of breaking, is insufficient to show a burglary. —Strickland v. State, Tex., 78 S. W. Rep. 689.

36. BOUNDARIES—Dedication of Street.—Where owner of land, dedicated as a street by common-law dedication, sells lots fronting thereon, he ceases to be owner of the fee title to street.—Owen v. Village of Brookport Ill., 69 N. E. Rep. 952

37. BOUNDARIES—General Description.—The general description of a deed, fixing the boundaries by governmental monuments and a natural object, will prevail over erroneous description by metes and bounds.—Patton v. Fox, Mo., 78 S. W. Rep. 804.

38. CARRIERS—Leaving Car While in Motion.—An instruction that if a street car conductor could have prevented a passenger from leaving the car while in motion and failed to do so, the passenger could recover, was erroneous. — Shareman v. St. Louis Transit Co., Mo., 78 S. W. Rep. 846.

39. CARRIERS—Pleading Contributory Negligence.—Where, in an action against a street railway company for injuries to a passenger, there was no plea of contributory negligence, there was no occasion for an instruction that issue of such negligence was not in the case.—Duffy v. St. Louis Transit Co., Mo., 78 S. W. Rep. 831

40. CARRIERS—Stopping Car at Crossing.—Where city ordinance requires street cars to stop at crossings,

rule of company as to stopping when car is late held inadmissible.—Maguire v. St. Louis Transit Co., Mo., 78 S. W. Rep. 888.

41. CARRIERS—Unreasonable Delay in Unloading Cars.—Railroad company held entitled to charge for rental of cars of bulk freight, not unloaded within a reasonable time after arrival at destination.—Schumacher v. Chicago & N. W. Ry. Co., Ill., 69 N. E. Rep. 825.

42. CHARITIES—Action Against Voluntary Association.—In a suit against a voluntary religious association, held, that it did not appear that there was any property which could in equity be subjected to plaintiff's claim.—Methodist Episcopal Church South v. Clifton, Tex., 78 S. W. Rep. 732.

43. CEMETERIES—Obligations of Fee Owner.—Equity will enjoin the owner of land, dedicated to the public for burial purposes, from defacing or meddling with graves therein, at the suit of any party having deceased relatives or friends buried therein.—Wormley v. Wormley, Ill., 69 N. E. Rep. 865.

44. CIVIL RIGHTS—Indictment Against Negro by White Grand Jurors.—An indictment against a negro by a grand jury composed of white men held not invalid on the ground of alleged discrimination against the negro race.—Smith v. State, Tex., 78 S. W. Rep. 694.

45. CONSTITUTIONAL LAW — Equal Protection of the Law.—Act Ark., April 23, 1891 (Sess. Acts, 1891, p. 296), requiring all notes taken for patented machines or things, or patent rights, to show consideration on their face, and declaring that any such note not so showing shall be absolutely void, but which further provides that it "shall not apply to merchants and dealers who sell patented things in the usual course of business," is unconstitutional as denying to persons within the state's jurisdiction the equal protection of the laws.—Union County Nat. Bank v. Ozan Lumber Co., U. S. C. C., W. D. Ark., 127 Fed. Rep. 206.

46. CONSTITUTIONAL LAW—Nonresident Lands.—Acts Ark. 1895, p. 88, No. 71, providing for the sale of nonresident lands for delinquent taxes, held not unconstitutional, as discriminating against nonresidents.—Johnson v. Hunter, U. S. C. C., E. D. Pa., 127 Fed. Rep. 219.

47. CONSTITUTIONAL LAW — Ownership of Right to Publish Statutes.—Chapter 124, p. 630, Acts 28th Gen. Assem., granting to a person a right to publish the statutes of the state, and making such publication *prima facie* evidence of the law, held not unconstitutional, as the granting of any special or exclusive privilege.—Marsh v. Stonebraker, Neb., 98 N. W. Rep 699.

48. CONSTITUTIONAL LAW—Summary Condemnation of Intoxicating Liquors.—Constitutional provision as to due process of law does not prevent legislature from enacting statute like Act Feb. 13, 1899 (Acts 1899, p. 11), providing for summary destruction of liquor without jury trial.—Kirkland v. State, Ark., 78 S. W. Rep. 770.

49. CONTRACTS—Adulterous Conduct of Salesman.—A contract for the employment of a married man as a salesman of babbitt metal conditioned for its continuance on the salesman's not associating with a woman of bad repute, does not contravene public policy.—Gould v. Magnolia Metal Co., Ill., 69 N. E. Rep. 896.

50 CONTRACTS—Parol Testimony of Prior Conversations.—Where conversations occurring prior to the making of a contract in writing are merged in the contract, parol testimony of the conversations is inadmissible.—Ellis v. Conrad Seipp Brewing Co., Ill., 69 N. E. Rep. 808.

51. CONTRACTS—Persons Liable.—Where defendant appended his signature to an acceptance of a contract by a firm composed of his sons, of which he was not a member, he was liable thereon as a party to the contract.—General Electric Co. v. Gill, U. S. C. C., E. D. Pa., 127 Fed. Rep. 241.

52. CONTRACT—Tender of Performance.—In an action for a breach of a contract, which consists of reciprocal promises, the plaintiff must allege and prove performance, a tender of performance, or facts excusing performance, to entitle him to recover.—Lapham v. Bossemeyer Bros., Neb., 98 N. W. Rep. 699.

53. COPYRIGHT—Lawful Use of Publication.—Defendant's use of plaintiff's publication, for the purpose of obtaining the names of individuals, firms, and corporations engaged in business, to be inserted in defendant's publication, held not an unlawful use of complainant's book.—Dun v. International Mercantile Agency, U. S. C. C., S. D. N. Y., 127 Fed. Rep. 173.

54. CORPORATIONS—Claims by Stockholders.—In proceedings by a stockholder and creditor of a corporation to establish a claim against it, proof of payment of money by him to it was not evidence of the debt.—Hollins v. American Union Electric Co., N. J., 56 Atl. Rep. 1041.

55. CORPORATIONS—Defeasance Clause of Mortgage.—Provisions of a corporate mortgage for sale by trustees, after default, without judicial proceedings or appraisement, held valid.—Etna Coal and Iron Co. v. Marting Iron and Steel Co., U. S. C. C. of App., Sixth Circuit, 127 Fed. Rep. 32.

56. CORPORATIONS—Illegal Transfer of Property.—Minority stockholders can maintain an action to set aside an illegal transfer of the property and the good will of the corporation by the directors.—McLeod v. Lincoln Medical College of Cotner University, Neb., 98 N. W. Rep. 672.

57. CORPORATIONS—Minority Stockholders.—Directors of a corporation cannot bind it by contract with another corporation, of which they are also directors.—McLeod v. Lincoln Medical College of Cotner University, Neb., 98 N. W. Rep. 672.

58. CORPORATIONS—Powers Measured by Charter.—A corporation can exercise no powers not conferred by its charter, either expressly or by necessary implication.—Cumberland Telephone & Telegraph Co. v. City of Evansville, U. S. C. C., D. Ind., 127 Fed. Rep. 187.

59. CORPORATIONS—Signature Employing the Letters "Mfg."—A corporate signature employing the letters "Mfg.," instead of the word "Manufacturing," is sufficient.—Seiberling v. Miller, Ill., 69 N. E. Rep. 800.

60. CORPORATIONS—Voting by Proxy.—A stockholder can vote by proxy only when authorized by statute, or by the articles or by-laws of the corporation.—McKee v. Home Savings & Trust Co., Iowa, 98 N. W. Rep. 609.

61. COUNTIES—Attorney's Fees for Discovery and Collection of Taxes.—The allowance of 15 per cent. of the amount actually recovered by an attorney, appointed under Code, § 1374, to prosecute actions for taxes on property withheld, overlooked, etc., held not *prima facie* unreasonable.—Heath v. Albrook, Iowa, 98 N. W. Rep. 619.

62. COUNTIES—Salary of County Clerk.—The salary allowed a county clerk for services as clerk of the county board must be accounted for as fees of his office.—Mitchell v. Clay County, Neb., 98 N. W. Rep. 662.

63. CRIMINAL LAW—Maintaining Nuisance.—Employees who erect a nuisance for their employer, and then quit his service, may not, twelve years later, be convicted of maintaining the nuisance.—State v. Poyner, N. Car., 46 S. E. Rep. 500.

64. CRIMINAL TRIAL—Arraignment and Plea.—That defendant was put on trial without a formal arraignment and plea of not guilty is no ground for reversing a conviction of homicide, in the absence of any suggestion of prejudice.—Brewer v. State, Ark., 78 S. W. Rep. 773.

65. DAMAGES—Breach of Contract.—Under contract for sale of lumber, providing for reduced price if full quantity was not delivered, buyer could not recover damages other than in reduction of price for failure to deliver full quantity.—Jackson v. Hunt, Vt., 56 Atl. Rep. 1010.

66. DAMAGES—Impairment of Earning Capacity.—An injured street car passenger held entitled to compensation for future pain and suffering and impairment of earning capacity, though continuing the same work at

the same wages.—Duffy v. St. Louis Transit Co., Mo., 78 S. W. Rep. 831.

67. DEDICATION—Acceptance by City.—Acceptance is necessary to make a complete statutory dedication, and unless accepted, the fee to the street does not vest in the municipality.—Owen v. Village of Brookport, Ill., 69 N. E. Rep. 952.

68. DEDICATION — Acts as Evidencing Intention. — Where the acts of the owner of land tend to show a dedication thereof, he could not subsequently deprive them of such effect by testimony that he did not intend to dedicate.—Seidschlag v. Town of Antioch, Ill., 69 N. E. Rep. 949.

69. DEEDS — After Acquired Title. — Where husband conveyed land to wife by warranty deed, his after-acquired title held to inure to her, under Code, § 2915.—Hays v. Marsh, Iowa, 98 N. W. Rep. 604.

70. DEEDS—Conntruction.—Where a deed, reciting the execution of a contract by the grantor, is not binding on the grantor, the statements in the deed are of no force. —Dohmen v. Schlief, Mo., 78 S. W. Rep. 799.

71. DEEDS—Testamentary Disposition.—The fact that grantor remained in possession of land after the execution of a deed is an important fact in determining whether the deed was delivered.—Wilenou v. Handlon, Ill., 69 N. E. Rep. 891.

72. DEEDS—Undue Influence.—Influence, to be undue, must destroy, or at least impair or prevent, free agency. —Drinkwine v. Gruelle, Wis., 98 N. W. Red. 534.

73. DESCENT AND DISTRIBUTION—Deducting Barred Debt from Distributive Share.—In distribution of an estate, a debt due from a distributee, barred by limitations, cannot be deducted from the share of such distributee.—Boden v. Mier, Neb., 98 N. W. Rep. 701.

74. DESCENT AND DISTRIBUTION — Determination of Heirs.—Party failing to object to order of orphans' court sending abroad commissioner to determine heirs of decedent held to have waived such objection.—*In re* Flanagan's Estate, Pa., 56 Atl. Rep. 1062.

75. DIVORCE—Condonation of Adultery. Adultery of the wife, condoned by the husband, was no defense to a suit by her for divorce on grounds of cruelty.—Wabeke Wabeke, Iowa, 98 N. W. Rep. 559.

76 DOMICILE—Intention as an Element in Determining. —To bring about a change of residence, it is necessary that there be not only an intention to change the residence, but the change must actually be made, by abandoning the old, and permanently locating in the new, place of residence.—*In re* Moir's Estate, Ill., 69 N. E. Rep. 905.

77. EASEMENTS—Forfeiture of Right to Road.—A devisee of land charged with providing a suitable passway to other devisees held not entitled to stipulate for the forfeiture of the passway on the failure of the devisee to keep the gates closed.—Evans v. Motley, Ky, 78 S. W. Rep. 877.

78. EASEMENTS—Rights of Administrator.—The title to personal property, including choses in action of an intestate, passes to the administrator, and the heir at law has no right to collect or dispose of the same.—Bishop v. Matney, Ky, 78 S. W. Rep. 856.

79. EMINENT DOMAIN—Determination of Damages by Jury.—In condemnation proceedings held, that the jury had a right to resort to the results of their examination of the premises in determining the damages to a portion of the land affected.—Illinois, I. & M. Ry. Co. v. Humiston, Ill, 69 N. E. Rep. 880.

80. ESTOPPEL—Consideration for Contract.—Where a modification of a written contract was made at defendant's instance, he was estopped to set up a want of consideration therefor.—Putnam Foundry & Machine Co. v. Canfield, R. I., 56 Atl. Rep. 1083.

81. EVIDENCE—Conversation of Injured Party After Accident.—In an action for personal injuries, questions calling for the conversation between plaintiff and her daughter, immediately after the accident, were properly excluded.—Potter v. Cave, Iowa, 98 N. W. Rep. 569.

82. EVIDENCE—Dissolution of Partnership.—Declarations made by a party when articles dissolving a partnership were executed held admissible as a part of the transaction, where the articles had previously been introduced to prove a partnership.—Marks & Stix v. Hardy's Admr., Ky., 78 S. W. Rep. 864.

83. EVIDENCE—Expert Testimony as to the Cause of Breakage.—In an action for the price of goods sold, an expert witness held entitled to give his opinion as to whether breakages were due to the use of castings instead of defects in the materials.—Frederick Mfg. Co. v. Devlin, U. S. C. C. of App., Third Circuit, 127 Fed. Rep. 71.

84. EVIDENCE — Expert Testimony as to Value of Goods.—In an action for the price of goods sold, a question asked of expert witness, based on a test which he did not know was made from articles submitted by plaintiff, held properly refused.—Frederick Mfg. Co. v. Devlin, U. S. C. C. of App., Third Circuit, 127 Fed. Rep. 71.

85. EVIDENCE—Judicial Notice of Names of Streets.—The court will not take judicial notice of the names of streets and public places in the towns and cities of the state.—Baily v. Birkhofer, Iowa, 98 N. W. Rep. 594.

86. EVIDENCE—Mailing of Letter. — Evidence that a letter written by plaintiff to defendant was properly addressed and mailed by plaintiff raised a presumption that it was received by defendant, and justified admitting a copy in evidence.—Dick v. Zimmerman, Ill., 69 N. E. Rep. 754.

87. EVIDENCE—Modification of Contract.—Parol evidence of a subsequent agreement fixing the time of payment for work done held not objectionable as contradicting the written contract.—Putnam Foundry & Machine Co. v. Canfield, R. I., 56 Atl. Rep. 1083.

88. EVIDENCE—Of Partnership. — Mercantile reports held inadmissible to prove a partnership.—Marks & Stix v. Hardy's Admr, Ky., 78 S. W. Rep. 864.

89. EVIDENCE—Presumption as to Foreign Law.—Law of another state is presumed the same as the law of the state where the cause is tried.—McMillan v. American Exp. Co., Iowa, 98 N. W. Rep. 629.

90. EXECUTION—Duty to Divide Property.—Where an execution was levied on two lots, and the court ordered only so much sold as would satisfy the execution, it is to be presumed that the property was divisible.—Gorman v. Glenn, Ky., 78 S. W. Rep. 873.

91. EXECUTORS AND ADMINISTRATORS—Adverse Interests.—One nominated in a will as executor, but who had not applied for appointment for four years, and had acquired interests hostile to the beneficiaries, held not entitled to appointment.—*In re* Van Vleck's Estate, Iowa, 98 N. W. Rep. 557.

92. EXECUTORS AND ADMINISTRATORS — Homestead Award to Children.—An administrator's failure to publish notice of his appointment held not to affect the conclusiveness of an order awarding certain property to intestate's children as their homestead, as against the holder of a deed of trust thereon.—Tiboldi v. Palms Tex., 78 S. W. Rep. 726.

93. EXECUTORS AND ADMINISTRATORS—Sale to Pay Debts —A widow is entitled to ask for the sale of her deceased husband's real estate, other than the homestead, in order to pay the amount of her award legally found due to her.—Reinhardt v. Seaman, Ill., 69 N. E. Rep. 847.

94. FEDERAL COURTS—State Decision on Constitutionality of Statute.—The decision of the highest court of the state sustaining the constitutionalty of the state statute is not binding on the federal courts as to whether the statute is violative of the federal constitution.—Morenci Copper Co. v. Freer, U. S. C. C., S. D. W. Va., 127 Fed. Rep. 199.

95. FIRE INSURANCE—Legislative Control.—The acceptance by an insurance company of an amendatory

act stipulating that the company shall not be exempt from subsequent general laws held to give legislative control over the company.—Yates v. People, Ill., 69 N. E. Rep. 775.

96. FIXTURES—Removal by Equitable Owner.—On issue as to whether certain fixtures became a part of the realty, question as to formal forfeiture of equitable contract by legal title holder held immaterial.—Seiberling v. Miller, Ill., 69 N. E. Rep. 800.

97. FRAUDS, STATUTE OF—Incoming Partner's Liability for Firm Debts.—An incoming partner may bind himself for the firm debts by an agreement not within the statute of frauds.—Bartlett v. Smith, Neb., 98 N. W. Rep. 687.

98. FRAUDULENT CONVEYANCES—Giving Earnings to Wife to Avoid Levy.—An insolvent debtor cannot systematically give practically all earnings to his wife, and thereby allow her to accumulate property in her own name which, if acquired by him, would be subject to levy.—Wolfsberger v. Mort, Mo., 78 S. W. Rep. 817.

99. FRAUDULENT CONVEYANCES—Validity as Between Immediate Parties.—Where husband made conveyance to wife to defraud creditors, he cannot show trust in her as against parties claiming upder her.—Hays v. Marsh, Iowa, 98 N. W. Rep. 604.

100. GARNISHMENT—Gift from Insolvent Father.—Where a son, summoned as garnishee on a judgment against his father, answered admitting a gift from his father, without any showing that the father was insolvent at the time, evidence *aliunde* was inadmissible to show such insolvency.—Bolton v. Bailey, Iowa, 98 N. W. Rep. 560.

101. GARNISHMENT—Trustee.—Voluntary appearance of trustee in trustee process does not attach the funds of the principal defendant.—Hathorn v. Robinson, Me., 56 Atl. Rep. 1057.

102. GUARANTY—Guarantor's Liability.—A guarantor of a note held not discharged from liability on the failure of the payee to give notice of the nonpayment of the note —Pfaelzer v. Kau, Ill., 69 N. E. Rep. 914.

103. GUARANTY—Notice of Non-payment.—Where there is an absolute guaranty of a debt of another, notice of non-payment by the original debtor is unnecessary in order to hold the guarantor.—McKee v. Needles, Iowa, 98 N. W. Rep. 618.

104 GUARDIAN AND WARD—Privileged Communications.—There is a distinction between the privileges accorded to parents and guardians in their communications with children and wards as to their domestic relations and those which exist between strangers.—Trumbull v. Trumbull, Neb., 98 N. W. Rep. 683.

105. GUARDIAN AND WARD—Right to Select Guardian.—Rev. St. 1889, §§ 299, 601, authorizing public administrators to take charge of the estates of minors under 14 years of age, do not deprive a minor 14 years of age of the right to select a guardian, under Rev. St. 1899, § 3485.—State v. Mast, Mo., 78 S. W. Rep. 833.

106. GUARDIAN AND WARD—Sale of Ward's Realty.—The guardian, in conducting a sale of his ward's realty, has general supervision thereof, which cannot be delegated.—Levara v. McNeny, Neb., 98 N. W. Rep. 679.

107. HABEAS CORPUS—Custody of Child.—On *habeas corpus* to obtain custody of a child, whose father resided in Scotland, an act of parliament providing for cases of abandoned children held properly disregarded; there being no evidence of abandonment.—Miller v. Miller, Iowa, 98 N. W. Rep. 631.

108. HOMESTEAD—Abandonment.—The abandonment of the homestead by the mother on the death of the father will deprive the minor children of their homestead rights.—Kloss v. Wylezalek, Ill., 69 N. E. Rep. 863.

109. HOMESTEAD—Fraudulent Conveyance.—In an action to subject land to a judgment, an answer by a defendant that the property was exempt from the judgment debt, or any debt that defendant might owe, held to state a good defense.—Baxter v. Avery, Neb., 98 N. W Rep. 667.

110. HOMICIDE—Killing Third Person Under Compulsion.—The killing of an innocent persen is not justified by the unlawful compulsion of third parties, rendering such act necessary to save one's own life.—Brewer v. State, Ark., 78 S. W. Rep. 773.

111. HOMICIDE—What Constitutes Murder—Premeditation and deliberation, or willful intent, need not exist for any length of time to constitute murder in the first degree.—Robinson v. State, Neb., 98 N. W. Rep. 694.

112. HOMICIDE—Objections not Made at Trial.—Where a clause of the court's charge was not excepted to at the trial, or objected to on motion for a new trial, a criticism therof cannot be reviewed on appeal.—Smith v. State, Tex., 78 S. W. Rep. 694.

113. HUSBAND AND WIFE—Allowance for Separate Maintenance.—An allowance of $160 a year for separate maintenance held not excessive.—Goldie v. Goldie, Iowa, 98 N. W. Rep. 630.

114. INDICTMENT AND INFORMATION—Averment of Time.—An averment in an indictment that the offense was committed "on or about" a day named is sufficient, except in cases where the time is an ingredient of the offense.—United States v. McKinley, U. S. C. C., D. Oreg., 127 Fed. Rep. 168.

115. INFANTS—Guardian *ad Litem*.—A guardian *ad litem* should conduct the defense of his ward with the same care as though he were acting under a retainer.—Boden v. Mier, Neb., 98 N. W. Rep. 701.

116. INTOXICATING LIQUORS—Percentage of Alcohol.—The court cannot say as a matter of law that a liquor which contains 8 per cent. or more of alcohol is intoxicating, and that one which contains a less percentage is not.—State v. Piche, Me., 56 Atl. Rep. 1052.

117. INTOXICATING LIQUORS—Signatures to Petition for License.—Where remonstrance to the granting of a liquor license shows that signers of petition were made freeholders to enable them to qualify as such, they should be deducted in determining the number of signatures.—Colglazier v. McClary & Martin, Neb., 98 N. W. Rep. 670.

118. JUDGES—Statute Creating New Judicial District.—A statute creating a new judicial district, and appointing the judge of another district the judge thereof, held to have made him the lawful judge of the new district.—Maroney v. State, Tex., 78 S. W. Rep. 696.

119. JUDGMENT—Foreclosure of Mortgage.—Adjudication as to holder of legal title in a proceeding foreclosing a real estate mortgage, held not an adjudication as to equitable title.—First Nat. Bank v. Leech, Ill., 69 N. E. Rep. 890.

120. LANDLORD AND TENANT—Estoppel to Deny Dedication of Street.—One who accepts a lease from a town, which gives him the privilege of landing a ferryboat at a landing on a street, is estopped, during the existence of the tenancy, from disputing the validity of the title of the town to the street.—Owen v. Village of Brookport, Ill., 69 N. E. Rep. 952.

121. LANDLORD AND TENANT—Lien on Crops.—In a suit to fix the landlord's lien on the proceeds of the sale of the tenant's crop, the rent claim and its amount must be established by proper proof.—Judge v. Curtis, Ark., 78 S. W. Rep. 746.

122. LIBEL AND SLANDER—Anonymous Publication.—An alleged libel held not an anonymous publication, within Pub. Laws 1901, p. 784, ch. 557.—Williams v. Smith, N. Car., 46 S. E. Rep. 502.

123. LICENSES—Tender of Valid Tax.—In an action to restrain the enforcement of a statute imposing an increased license tax on corporations, complainant held required to allow a tender of the original tax as a prerequisite to its right to an injunction.—Morenci Copper Co. v. Freer, U. S. C. C., S. D., W. Va., 127 Fed. Rep. 199.

124. LIFE INSURANCE—Agent's Commission.—Contract between life insurance company and agent, whereby

agent's commissions were to be fixed annual charges on policies procured by him, held not unreasonable and void, as tying up future accruing funds or the association or controlling discretion of future directors.—Schrimplin v. Farmers' Life Ass'n, Iowa, 98 N. W. Rep. 613.

125. MANDAMUS—Insurance Commissioner.—Under the facts mandamus will not issue to compel the superintendent of insurance to issue to an insurance company a certificate to do business.—Yates v. People, Ill., 69 N. E. Rep. 775.

126. MASTER AND SERVANT—Adulterous Conduct of Salesman. — Adulterous conduct of salesman held to furnish sufficient ground for his discharge, under contract of employment.—Gould v. Magnolia Metal Co., Ill., 69 N. E. Rep. 896.

127. MASTER AND SERVANT—Are all Ordinary Risks of Employment Assumed.—A servant does not assume all the opdinary risks of his employment, but only such as are known to him or so obvious that knowledge may be presumed.—Cobb Chocolate Co. v. Knudson, Ill , 69 N. E. Rep. 816.

128. MASTER AND SERVANT—Boiler Explosion.—Corporation held liable for injuries caused by defective repairs of a boiler under direction of its engineer, though the work was done by an independent contractor.—James McNeil & Bro. Co. v. Crucible Steel Co., Pa., 56 Atl. Rep. 1067.

129. MASTER AND SERVANT—Dangerous Duties.—That the act which a servant is called upon by the master to perform is attended with a degree of danger, held not to necessarily render him guilty of contributory negligence.—Pressed Steel Car Co. v. Horath, Ill., 69 N. E. Rep. 959.

130. MASTER AND SERVANT—Defective Appliances.—A master is not liable for injuries to a servant by reason of defective appliances, where the appliance used was sanctioned by the trade and experience of the business as reasonably safe.—Westinghouse Electric & Mfg. Co. v. Heimlich, U. S. C. C. of App., Sixth Circuit, 127 Fed. Rep. 92.

131. MASTER AND SERVANT—Independent Contractor's Liability.—A proprietor of a store held not liable for the torts of a driver of a delivery wagon employed by one who, under an independent contract, delivered goods for the proprietor.—Jahn v. McKnight, Ky., 78 S. W. Rep. 862.

132. MECHANICS' LIENS—Work Completed by Sureties.—Rights of sureties who completed building contract held superior to the claims of materialmen and laborers for work done for and material furnished to the contractor.—St. Peter's Catholic Church v. Vannote, N. J., 56 Atl. Rep. 1037.

133. MORTGAGES—Bill to Redeem.—In a bill to redeem a mortgage, court has jurisdiction to determine the amount of tax liens outstanding on the property, growing out of the sale to the mortgagor, and which the mortgagee stipulated to pay.—Crummett v. Littlefield, Me., 56 Atl. Rep. 1053.

134. MUNICIPAL CORPORATIONS—Liability to Contractor for Improvements.—Under a municipal improvement ordinance and contract, the contractor held not entitled to sue the city in assumpsit for assessments which had been declared invalid on its officers' refusing to relevy the same.—City of Alton v. Foster, Ill , 69 N. E. Rep. 783.

135. MUNICIPAL CORPORATIONS—Title of Ordinance.—Contention that there was a variance between the caption of an ordinance for a public improvement and the body of the ordinance held untenable.—Chicago Union Traction Co. v. City of Chicago, Ill., 69 N. E. Rep. 849.

136. MUNICIPAL CORPORATIONS—Walking Upon Defective Streets.—It is not negligence as a matter of law for one to walk upon a street which he can see is out of repair or obstructed by debris.—Swift & Co. v. Langbein, U. S. C. C. of App., Sixth Circuit, 127 Fed. Rep. 111.

137. NEGLIGENCE—Injury to Clerk.—Building contractor held liable for injuries caused by his negligence to a clerk of his employer.—Kitchen v. Riter-Conley Mfg. Co., Pa., 56 Atl. Rep. 1083.

138. NEGLIGENCE—Proximate Cause of Injury.—An instruction on contributory negligence, requiring such negligence to be the sole direct cause of the accident in order to be a defense, was erroneous.—Hanheide v. St. Louis Transit Co., Mo., 78 S. W. Rep. 820.

139. NUISANCE—Hospital.—That the trustees of a hospital did not know the offensive manner in which it was conducted was no answer to suit to enjoin its maintenance.—Deaconess Home & Hospital v. Bontjes, Ill., 69 N. E. Rep. 748.

140. PARTITION—Abandonment of Homestead.—Decree in partition suit holding eight-ninths of property subject to homestead held prejudicial to complainant holding title to remaining ninth.—Kloss v. Wylezalek, Ill., 69 N. E. Rep. 863.

141. PARTITION—Marketable Title.—Title held not unmarketable for failure to make person having no interest therein defendant.—Dresser v. Travis, N. Y., 69 N. E. Rep. 734.

142. PARTY WALLS—Construction with Openings.—To replace a party wall by a wall in which numerous openings occur is a violation of the party wall agreement.—Springer v. Darlington, Ill., 69 N. E. Rep. 946.

143. PERJURY—Indictment.—Where an indictment for perjury charges in general terms that the testimony was on a material issue, it is for the court to determine from the record in testimony the materiality of the issue.—Maroney v. State, Tex., 78 S. W. Rep. 696.

144. PLEADING—Waiver of Defects.—Defects in the answer are waived by plaintiff agreeing that the judge shall find the facts and render judgment thereon.—Early v. Early, N. Car., 46 S. E. Rep. 503.

145. PILOTS—Action Against for Negligence.—A vessel is liable for a collision caused by the negligence of her pilot, although compulsorily imposed upon her; and the pilot is liable therefor to such vessel, as well as to the one injured.—Donald v. Guy, U. S. D. C., E. D. Va., 127 Fed. Rep. 228.

146. POWERS—Illusory Appointment.—The doctrine of illusory appointment held not applicable in this state to invalidate the execution of a power.—Hawthorn v Ulrich, Ill., 69 N. E. Rep. 885.

147. PRINCIPAL AND SURETY—Completion of Work by Sureties.—Sureties, who completed building contract, held not to represent the contractor, nor the owner, but to have done the work to relieve themselves as cheaply as possible under their obligation as sureties.—St. Peter's Catholic Church v. Vannote, N. J., 56 Atl. Rep. 1037.

148. PRINCIPAL AND SURETY—Payment of Misappropriated Funds.—Secret redeposit of misappropriated funds did not become a payment until accepted by creditor as such, and he could then, by agreement with debtor, apply it to funds last misappropriated.—Grant County Building, Loan & Savings Ass'n v. Lemmon, Ky., 78 S. W. Rep. 874.

149. RAILROADS—Duty to Trespasser.—One attempting to cross railway track by climbing over car held guilty of contributory negligence.—Illinois Cent. R. Co. v. Broughton, Ky., 78 S. W. Rep. 876.

150. RAILROADS—Injury to Child on Track.—In an action for injuries to a child on a railroad track, it was proper to charge that the railroad's failure to keep a lookout for such children was negligence *per se*.—Missouri, K. & T. Ry. Co. of Texas v. Hammer, Tex., 78 S. W. Rep. 708.

151. RECORDS — Photographs of Convicts. — Photographs and measurements taken to identify criminals under the statute are public records which cannot be removed or surrendered to the convict on acquittal on subsequent new trial.—*In re* Molineux, N. Y., 69 N. E. Rep. 727.

152. SALES—Contract to Furnish City Water Plant.—Incorporation of contractor's proposition in contract with

city held to show acceptance by city of offer contained therein as to capacity of machinery for water supply plant.—City of Rockford v. Mead, Ill., 69 N. E. Rep. 756.

153. SALES—Output of Coal Mine.—Where, on breach of contract for the sale of the output of a coal mine, which the buyer had agreed to sell to another, he was unable to obtain other coal with which to perform, he was entitled to recover profits.—Wilmoth v. Hamilton, U. S. C. C. of App., Third Circuit, 127 Fed. Rep. 48.

154. SALES—Remedies for Breach of Implied Warranty—A purchaser of goods on implied warranty held entitled to receive the goods and seek redress for breach of the contract.—Ellis v. Riddick, Tex., 78 S. W. Rep. 719.

155. SALES—Retention of Lien.—The lien for the price of chattels sold conditionally held not waived by the taking of additional security.—Kimball v. Costa, Vt., 56 Atl. Rep. 1009.

156. SCHOOLS AND SCHOOL DISTRICTS—Action for Price.—In action for goods sold a school district, certified copy of warning for town meeting, and of proceedings at meeting which authorized payment of claim, held admissible.—Currier v. Town School Dist. of Brighton, Vt., 56 Atl. Rep. 1016.

157. SET-OFF AND COUNTERCLAIM—Bill to Redeem Mortgage.—In applying the doctrine of set-off, courts in equity seek to give effect to the rule in all cases where peculiar equities clearly require it.—Crummett v. Littlefield, Me., 56 Atl. Rep. 1053.

158. STATES—Appointment of Commissioners.—Governor has no inherent power, either by virtue of his office or by Const., art. 6, § 28, to appoint commissioners, such as members of State Capitol Board chosen for particular purpose.—Cox v. State, Ark., 78 S. W. Rep. 756.

159. SPECIFIC PERFORMANCE—Contract to Convey Land.—A person who has signed a contract to convey land cannot escape liability by a subsequent unauthorized alteration made by his agent, with the intent to defraud the purchaser.—Cable v. Jones, Mo., 78 S. W. Rep. 780.

160. STIPULATIONS—Use in Subsequent Action.—A stipulation of facts made and used in the trial of a former action between the same parties which had been finally determined was inadmissible in a subsequent action.—City of Alton v. Foster, Ill., 69 N. E. Rep. 783.

161. SUBROGATION—Voluntary Payment of Debt by Stranger.—A party voluntarily agreeing to pay, and paying, a debt to the creditor, held not entitled to be subrogated to the rights of the creditor on a bond executed to him by the debtor.—Crane v. Noel, Mo., 78 S. W. Rep. 826.

162. TAXATION—Charitable Institution.—Where an incorporation claims exemption from a collateral inheritance tax as a charitable institution, it must appear that its objects are charitable, within the doctrine of charitable uses.—*In re* Landis' Estate, N. J., 56 Atl. Rep. 1039.

163. TAXATION—Insurance Policies.—Taxing of policy issued by fraternal benefit society while in the hands of the beneficiary after death of insured held not double taxation.—Cooper v. Board of Review of Montgomery County, Ill., 69 N. E. Rep. 878.

164. TELEGRAPHS AND TELEPHONES—Delay in Transmitting Message.—It is not negligence for a telegraph company to fail to transmit a message during the hours when its offices are closed and not being operated, under its rules as to office hours.—Western Union Tel. Co. v. Christensen, Tex., 78 S. W. Rep. 744.

165. TRADE-MARKS AND TRADE NAMES—Protection Against Infringement.—The right of the owner of a trade-mark to be protected in the exclusive use thereof is not dependent on the federal statute authorizing registration.—Ohio Baking Co. v. National Biscuit Co., U. S. C. C. of App., Sixth Circuit, 127 Fed. Rep. 116.

166. TRESPASS TO TRY TITLE—Adverse Possession.—Continuance in possession of land adjudged to belong to another held not to affect the conclusiveness of the judgment, as far as title to the date of its rendition is concerned.—Weisman v. Thomson, Tex., 78 S. W. Rep 728.

167. TRIAL—Comments of Counsel.—The comments of counsel on the evidence and conduct of witnesses is a matter for the sound discretion of the presiding judge.—Chicago City Ry. Co. v. Creech, Ill., 69 N. E. Rep. 919.

168. TRIAL—Compulsory Nonsuit.—On the question as to whether or not there should be a compulsory nonsuit, the evidence should be considered in its most favorable aspect for the plaintiff.—Duffy v. St. Louis Transit Co., Mo., 78 S. W. Rep. 831.

169. TRUSTS—Fee or Life Estate.—A trust under a bill held to cease when the estate was reduced to possession by executor, the debts and specific legacies paid, and the balance divided between the beneficiaries of the residue.—Kohtz v. Eldred, Ill., 69 N. E. Rep. 900.

170. VENDOR AND PURCHASER—Unrecorded Deed.—A wife, by joining in a deed, with her second husband, held to give notice that she had no latent equities under an unrecorded deed executed to her first husband.—Gray v. Lamb, Ill., 69 N. E. Rep. 794.

171. WATERS AND WATER COURSES—Regulation of Water Rates.—Rates fixed by a city, at which a water company shall furnish water to it and its citizens under an existing contract, may be interfered with by the court for unreasonableness amounting to a deprivation of property.—Palatka Waterworks v. City of Palatka, U. S. C. C., S. D. Fla., 127 Fed. Rep. 161.

172. WATERS AND WATER COURSES—Removal of Obstruction.—In an action to compel the removal of obstructions from a water course which had existed for 30 years or more, it was immaterial that defendant's father originally dug the channel.—Baumgartner v. Bradt, Ill., 69 N. E. Rep. 912.

173. WILLS—Acceptance of Legacy Estops Contest.—The acceptance of legacies held to estop the legatee from contesting the will.—Stone v. Cook, Mo., 78 S. W. Rep. 801.

174. WILLS—Repugnant Provisions—Where a clause of a will devised property directly to testatrix's children, but a later clause created a trust in the same property, the repugnancy did not affect the validity of the trust, the later clause prevailing.—Harris v. Ferguy, Ill., 69 N. E. Rep. 844.

175. WILLS—Testamentary Capacity.—Letters of testator are admissible to show his knowledge of the contents of the will.—*In re* Wheelock's Will, Vt., 56 Atl. Rep. 1013.

176. WILLS—Transfer of Title by Foreign Will.—The duly authenticated record of a foreign will affords no presumption that it was duly proved, so as to dispense with proof of such fact in support of a title to land depending thereon.—Fenderson v. Missouri Tie & Timber Co., Mo., 78 S. W. Rep. 819.

177. WITNESSES—Child Seven Years.—There is no rule of law making a seven year old child incompetent as a witness because of his age.—Shannon v. Swanson, Ill., 69 N. E. Rep. 869.

178. WITNESSES—Competency of Legatee.—A legatee is not incompetent, because of interest, to testify to the execution of the will.—*In re* Wheelock's Will, Vt., 56 Atl. Rep. 1013.

179. WITNESSES—Cross-Examination.—A witness may be cross-examined as to his direct testimony in all its bearings, and as to whatever goes to explain, or modify, or discredit what he stated in his examination in chief.—Chicago City Ry. Co. v. Creech, Ill., 69 N. E. Rep. 919.

180. WITNESSES—Delay in Delivering Telegram.—In an action against a telegraph company for delay in delivering a message, held error to admit in evidence the counter delivery sheet of defendant.—Western Union Tel. Co. v. Christensen, Tex., 78 S. W. Rep. 744.

181. WITNESSES—Transactions With Deceased.—A witness, not interested in a suit against an administrator, held competent to testify to transactions with the decedent.—Dawson v. Wombles, Mo., 78 S. W. Rep. 823.